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BOUNDARIES, POSSESSIONS, AND CONFLICTS IN CENTRAL AND NORTH AMERICA AND THE CARIBBEAN

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BOUNDARIES, POSSESSIONS, AND CONFLICTS IN CENTRAL AND NORTH AMERICA AND THE CARIBBEAN

BY

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CAMBRIDGE, MASSACHUSETTS
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1941

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PREFACE

THE present book is a companion to *Boundaries, Possessions, and Conflicts in South America*, published under the same auspices in 1938, and completes for the Central and North American and Caribbean republics the factual story of the boundary and territorial disputes of the Western Hemisphere. The material thus presented under one cover is gathered from many separate and scattered sources, to which the notes for the most part direct the inquirer who may wish to pursue in further detail any particular topic; and there has been a constant endeavor to compile a narrative that should prove both easy to read and useful to consult. Brief sketches of the historical development of the Central American and Caribbean nations and Mexico have been included for their intimate connection with the boundary problems and for the particular interest of the United States in everything between the Rio Grande and the Panama Canal. Pecuniary claims for damages not affecting territorial rights, whether or not the subject of arbitration, have been uniformly omitted, to limit the work strictly to boundary and possession problems. In South America, of twenty-six binational boundary lines, all but six (Argentina–Paraguay, Argentina–Uruguay, Bolivia–Chile, Colombia–Peru, Ecuador–Peru, and British Guiana–Surinam), or 77 per cent have been definitely or practically settled, while in Central America and the Caribbean (excluding boundaries of the United States) of twelve binational land lines just half (Costa Rica–Nicaragua, Costa Rica–Panama, Dominican Republic–Haiti, Guatemala–British Honduras, Honduras–Nicaragua, and Honduras–Salvador) are still unsettled; perhaps demonstrating afresh the old adage of real estate law that the smaller the issue, the harder the fight. In a consistent intention to take no sides and offer no propaganda, except perhaps for the implicit illustration of the advantages of arbitration over war as a method of settling disputes, every situation has been presented as unemotionally and impartially as possible. Commonly accepted spellings for institutions, men, and places have been adopted; and proper names have been given in full the first time of mentioning only, but may be referred to with the aid of the index.

The work has been made possible by a grant from the Bureau of International Research, Harvard University and Radcliffe College, for the services of a secretary and a map maker, and the supply of necessary material; and Professor Sidney B. Fay, Chairman of the Bureau, has been an encouraging and generous friend throughout the eight months of compilation. Sincere acknowledgment of

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GORDON IRELAND

Cambridge, Massachusetts
January, 1941

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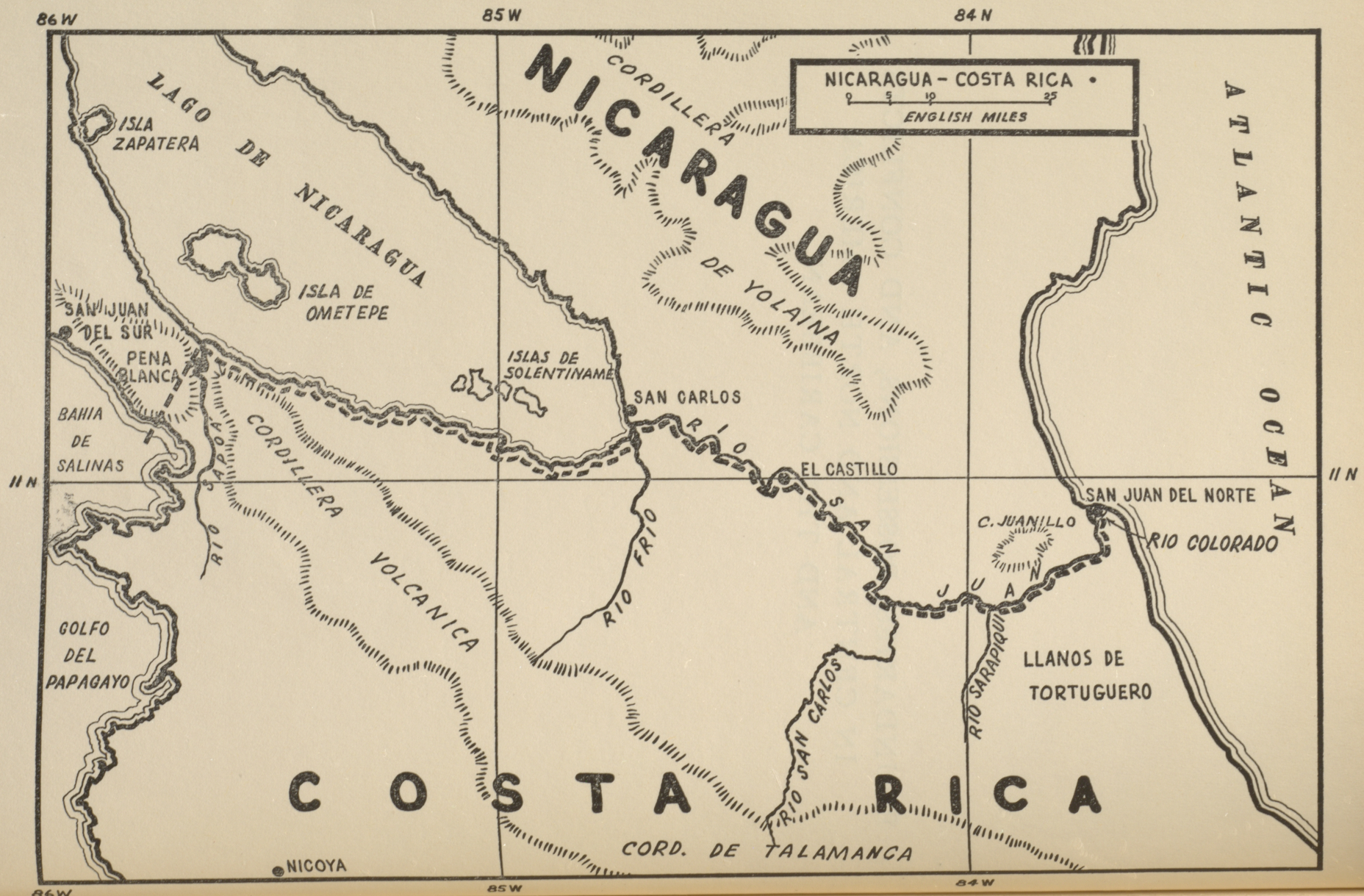
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BOUNDARIES, POSSESSIONS, AND CONFLICTS IN CENTRAL AND NORTH AMERICA AND THE CARIBBEAN


86W
85W
84W
11N
NICARAGUA - COSTA RICA
0 5 10 25
ENGLISH MILES
NICARAGUA
COSTA RICA
LAGO DE NICARAGUA
ISLA ZAPATERA
ISLA DE OMETEPE
SAN JUAN DEL SUR
PENA BLANCA
BAHIA DE SALINAS
GOLFO DEL PAPAGAYO
NICOYA
CORDILLERA DE YOLAINA
ISLAS DE SOLENTINAME
SAN CARLOS
RIO FRIO
RIO SAN JUAN
EL CASTILLO
RIO SARAPIQUI
RIO SAN CARLOS
CORDILLERA VOLCANICA
CORD. DE TALAMANCA
C. JUANILLO
SAN JUAN DEL NORTE
RIO COLORADO
LLANOS DE TORTUGUERO
ATLANTIC OCEAN

CHAPTER I

DISPUTES AND ADJUSTMENTS

1. Costa Rica–Nicaragua

Costa Rica

COSTA RICA, which appears to have been the most ancient province of the Indian realm of Guatemala, was invaded by Gil González Dávila in 1522 with an expedition from the Gulf of San Miguel, on the south coast of Panama, and González governed the region until 1524, when he was seized by Francisco de las Casas on behalf of Cortéz from Mexico and sent in chains to Spain, where he died, April 27, 1526. Cortéz exercised little control of the country so distant from his capital, but the province of Costa Rica remained nominally under the audiencia of Guatemala and the viceroyalty of New Spain. On February 18, 1574, Philip II appointed Diego de Artieda y Chirinos governor and captain-general of the province of Costa Rica, from sea to sea in breadth and from the Desaguadero outlet (San Juan River) on the north to the province of Veragua on the Atlantic and towards Nicoya to the valleys of the Chiriquí on the South Sea.[1] Costa Rica was administered as part of Mexico until the fall of Iturbide; and formed part of the Central American Confederation from November 22, 1824, until November 1838,[2] when she withdrew and declared her independence. The first constitution, of January 21, 1825,[3] provided that:

> Art. 15. The territory of the State extends, for the present, from west to east, from the river Salto which divides it from the State of Nicaragua, to the river Chiriquí, bounding the Republic of Colombia; and from north to south from one sea to the other; its limits on the North Sea being from the mouth of the river San Juan to the Escudo de Veragua; and on the Pacific from the mouth of the river Alvarado to that of Chiriquí.

The second constitution, signed January 21, 1847,[4] provided, in substantially the same language:

> Art. 25. The boundaries of the State are the following: on the west, from where the Río de la Flor falls into the Pacific Ocean, thence the line continues along the shores of the Lake of Nicaragua and of the river San Juan to where the latter empties itself into the Atlantic; on the north, the same ocean from the mouth of the San Juan as far as the Escudo de Veraguas;

[1] Manuel M. de Peralta, *Historia de la Jurisdicción Territorial de Costa Rica* (Madrid, 1891).

[2] See Sec. 4, this chap., *infra*.

[3] *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 471.

[4] 35 *British and Foreign State Papers* 47.

on the east, from the latter point to the river Chiriquí, and on the south, from the mouth of the latter river to that of the Río de la Flor; but the frontier boundary line between this State and that of Nicaragua shall be definitively fixed when Costa Rica shall be heard in the national representation, or failing this, the matter shall be submitted to the impartial decision of one or more States of the Republic.

Spain acknowledged Costa Rica's independence by a treaty signed at Madrid, May 10, 1850,[5] in which Isabella II renounced:

Art. 1. . . . the sovereignty, rights and interests which belong to her over the American territory situated between the Atlantic and Pacific seas, with its adjacent islands, formerly known under the denomination of the province of Costarica, now the Republic of the same name, and over all other territories which may have been incorporated with said Republic.

The nation negotiated treaties with the United States,[6] Great Britain,[7] and several of the South American countries.[8] A third constitution of November 22, 1848,[9] provided that:

Art. 7. The limits of the territory of the Republic are those of the *uti possidetis* of 1826.

A fourth constitution of December 26, 1859,[10] provided that:

Art. 4. The territory of the Republic is comprised within the following boundaries: on the side next Nicaragua the same that were determined by the Treaty adjusted with that Republic on April 15, 1858; on the side next New Granada, those of the *uti possidetis* of 1826, excepting what may be determined by subsequent Treaties with that nation; and on the other sides by the Atlantic and Pacific.

Costa Rica was anxious to construct an interoceanic railroad, and after opening the Bay of Limón as a free port on September 20, 1867,[11] to replace Moín, for an eastern terminus, on January 9, 1869,[12] made a contract with the Costa Rica Railroad Company, promoted by three United States citizens, for the construction of a railroad from Limón to the Gulf of Nicoya to be wholly completed within five years.

The fifth constitution, of April 15, 1869,[13] provided:

Art. 3. The boundaries of the territory of the Republic are as follows: The Atlantic Ocean on the north; the Pacific on the south; on the side next the United States of Colombia, those of the *uti possidetis* of 1826, and on the side next Nicaragua, those fixed by the Treaty of April 15, 1858.

[5] Ratifications exchanged at Madrid, Dec. 21, 1850. *Trats. de España* (Janer, Madrid, 1869), 30. *Col. de Trats. Int. de Costa Rica* (San José, 1892), I, 55. 39 *British and Foreign State Papers* 1340.

[6] Signed at Washington, July 10, 1851. 10 Stat. L. 916. *U. S. Treaty Series*, No. 62. *Treaties of the U. S.* (Malloy, 1910), I, 341.

[7] Signed at San José, Nov. 27, 1849. 37 *British and Foreign State Papers* 20.

[8] Guatemala (with France), March 8 and 12, 1848. 37 *British and Foreign State Papers* 1364, 1375.

[9] 37 *British and Foreign State Papers* 777.

[10] 50 *British and Foreign State Papers* 1092.

[11] 58 *British and Foreign State Papers* 526. *U. S. For. Rel.*, 1866, II, 434, 442, 444, 542.

[12] Contract approved, June 9, 1869. 61 *British and Foreign State Papers* 567.

[13] 59 *British and Foreign State Papers* 216.

The sixth constitution, of December 7, 1871,[14] provided:

Art. 3. The territory of the Republic is contained between the Atlantic and Pacific Oceans. It bounds on the northeast with Nicaragua, from which it is separated by the dividing line marked by the Treaty of April 15, 1858 with that Republic; and on the southeast with that of Colombia, with respect to which the *uti possidetis* of 1826 shall be observed. These boundaries may be altered by treaties with the neighboring nations, or by appropriate arbitral decision.

The earlier railroad company having failed after completing sections of line from Limón to Carrillo (formerly Río Sucio) and from Cartago to Alajuela, a new contract was made on July 13, 1883,[15] with Minor Cooper Keith, a United States citizen, to arrange by arbitration with the creditors the foreign debt of the Government on loans contracted in London, and to finish the railroad from near Río Reventazón to Cartago, to operate with the existing sections which he already had under lease, and all to belong to the State after ninety-nine years. Costa Rica and Nicaragua, with Salvador, defeated the plan of General Justo Rufino Barrios, president of Guatemala, for a new Central American union in 1885.[16]

Costa Rica on July 20, 1897, complained to the Diet of the Greater Republic of Central America that a Nicaraguan artillery colonel with forty men had invaded Costa Rican soil at Los Chiles, four miles within the frontier, and carried off a sergeant and a soldier who were on business there, to which Nicaragua replied at first that after the return of a commission which had been sent to Los Chiles to inquire about certain alleged criminal acts, two deserters from the Costa Rican frontier guard appeared at San Carlos; and, later, that an escort had been sent to Los Chiles to protect a Nicaraguan man and two women who had been injured by Costa Rican frontier guards while peacefully navigating the river. Discussion of rights in the river and port of San Juan was dragged into the ensuing bitter exchange of notes and telegrams,[17] there were disturbances in the garrison at Granada, Nicaragua sent home the Costa Rican Consul General, and matters progressed almost to open hostilities, Costa Rica directing herself nominally against the Greater Republic of Central America, but in reality against Nicaragua. Finally with the friendly mediation of Guatemala the two nations signed on April 26, 1898,[18] on board the U. S. man-of-war *Alert*, in neutral waters of the Pacific off Cape Blanco (in 9°28′45″ N latitude and 85°03′30″ W longitude)

[14] 63 *British and Foreign State Papers* 294. Modified April 26, 1882. 73 *British and Foreign State Papers* 608. Amended, May 12, 1897. *Const. Pol. de la Rep. de Costa Rica* (San José, 1929). 89 *British and Foreign State Papers* 1129.

[15] Contract approved, July 19, 1883. 74 *British and Foreign State Papers* 1067. New similar contract of April 5, 1884, approved April 21, 1884, substituted for the former one. 76 *British and Foreign State Papers* 373, 382. *U. S. For. Rel.*, 1883, p. 63.

[16] See Sec. 4, this chap., *infra*.

[17] *Recopilación de Documentos Oficiales* (San José, 1897).

[18] Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXII (1905), 84. 90 *British and Foreign State Papers* 558.

a treaty of peace providing for disbandment of forces of both nations picketed on the frontier and reference of mutual claims to an arbitration tribunal of three Central Americans, one named by each party and the third by Guatemala, as arbitrators and peacemakers; but the question of boundaries under the treaty of April 15, 1858, the Cleveland award and the convention of March 27, 1896, was not to form any part of the claims to be paid before the arbitrators.

The Central American Court of Justice began its sessions at Cartago on May 25, 1908. Andrew Carnegie gave $100,000 for a permanent building, which was only partly finished when it was destroyed by an earthquake on May 3, 1910. The seat of the Court was transferred to San José by a convention of January 10, 1911, and Mr. Carnegie promptly gave another $100,000 for another courthouse[19] there, which was completed late in 1917. The Court made use of the building until, after the ineffectual decisions in Costa Rica *v* Nicaragua (below) and Salvador *v* Nicaragua,[20] among others, its ten-year term of life ended on March 12, 1918.[21] The Court turned its records and property, including the courthouse, over to Costa Rica, and the building has since been the home of the Ministry of Foreign Affairs. Costa Rica in July 1917 proposed a conference for continuation of the Court, approved by Honduras and Salvador, Nicaragua not invited, and the United States declining to participate because it did not recognize President Federico Tinoco, then governing in Costa Rica.[22] The conference was never held, and the suggestion came to nothing.

On April 12, 1917, Costa Rica delivered a note assuring the United States of her most loyal and sincere friendship, and stating that she considered it the duty of all American republics to support, at least morally, the noble attitude assumed by the United States, regretting that because of her lack of material strength she could not tender more substantial coöperation, but if she might be permitted to demonstrate her solidarity with the great sister republic of the North as by permitting the use of her waters and ports for war needs by the American navy, she would do so with the greatest satisfaction.[23]

The seventh constitution, of June 8, 1917,[24] provides:

> Art. 5. The territory of the Republic, which is situated between the Atlantic and Pacific Oceans, is bounded on the northwest by the Republic of Nicaragua, from which it is separated by the line established in the Treaty of Cañas-Jerez of April 15, 1858 and by Cleveland's

[19] *U. S. For. Rel.*, 1911, pp. 89–93.

[20] See Sec. 13, this chap., *infra*.

[21] *Amer. J. Int. Law*, XII (1918), 380. Manley O. Hudson, *The Permanent Court of International Justice* (New York, 1934), p. 61. *Ann. Amer. Acad. Pol. and Soc. Sci.*, CLVI (1931), 130. Clunet, *J. de. dr. int. privé*, XLV (1918), 1528.

[22] Invasion of Costa Rica; Message of President Wilson, Aug. 21, 1919. S. Doc. 77, XV, Ser. 7610, 66th Cong., 1st Sess. (Washington, 1919). *For. Aff.*, IX (1931), 207, 671.

[23] Naval War College, *International Law Documents*, 1917 (Washington, 1918), p. 77.

[24] 125 *British and Foreign State Papers* 301. Abrogated, Aug. 21, 1920, and fifth Constitution of 1871 restored. *Decr. Leg.*, 41. *La Gaceta* (San José, 1920), Año XLII, 784, 858.

award of March 22, 1888. It is bounded on the southeast by the Republic of Panamá, from which it is separated by the line established by Loubet's award of September 11, 1900, the Anderson-Porras Treaty of March 17, 1910 and by White's award of September 12, 1914.

Costa Rica declared war upon Germany on May 24, 1918.[25] After the downfall of President Manuel Estrada Cabrera of Guatemala on April 14, 1920, talk of a Central American union revived; and a conference of delegates from all five republics was called to meet at San José, Costa Rica. Costa Rica was admitted to the League of Nations on December 16, 1920.[26] On January 19, 1921, delegates of Costa Rica, Guatemala, Honduras, and Salvador signed a treaty of union,[27] providing for the formation of a federation of Central America, but Nicaragua declined to sign and the Costa Rican Congress later rejected the covenant by a close vote. Guatemala, Honduras, and Salvador ratified the treaty, but a revolution in Guatemala in December 1921 took her out of the federation, and the union movement collapsed. Costa Rica gave notice on December 24, 1924,[28] of her intention to withdraw from the League of Nations. Costa Rica, having been invited on March 15, 1928, to rejoin the League of Nations, desired on July 18, 1928,[29] to know the interpretation placed by the League on the Monroe Doctrine and the scope given to that doctrine when it was included in Article 21 of the Covenant. After elaborate examination of the question and search for a satisfactory yet harmless answer, the Council of the League replied on September 1, 1929, that Article 21 could not have the effect of giving to any international engagement a sanction or validity which it did not previously possess.

On October 9, 1935, Costa Rica announced the grant of a concession to California interests to establish a tuna packing plant in Puntarenas. Costa Rica refused to participate in the sanctions against Italy for the Ethiopian War; and on March 19, 1936, it was announced that in grateful recognition of Costa Rica's friendly action of abstention, Italy had presented her with 175 submachine guns. On August 12, 1937, the Refugee Economic Corporation bought for $50,000 cash from the Bank of Costa Rica fifty thousand acres of the old Tenorio estate, which the bank had foreclosed some time before, on which it was proposed to establish an agricultural colony for Jewish refugees from Germany. In May 1938 Japan was reported seeking a base for a fishing fleet at Puntarenas. In August 1938 Congress approved a new contract with the United Fruit Company; and authorized the expropriation for value to be paid of the electric light and power proper-

[25] *Col. de Leyes y Decr.*, 1918 (San José, 1919), I, 340, 341. *U. S. For. Rel.*, 1918, Supp. 1, p. 692.

[26] League of Nations, 1st Assembly (1920), *Comm. Meetings*, II, 173, 220; Plenary Meetings, 582, 605.

[27] See Sec. 4, this chap., *infra*.

[28] Effective, Jan. 1, 1927. League of Nations, 6th Assembly (1925), Plenary Meetings, 109; *Monthly Summary*, V, 214. *Amer. J. Int. Law*, XXIX (1935), 44; XXXII (1938), 148.

[29] League of Nations, 9th Assembly (1928), Plenary Meetings, 64, 324; *Official Journal*, 432, 1606. *For. Aff.*, VII (1928), 187. *Rec. des Cours* (1929, III), XXVIII, 67.

ties of the Electric Bond & Share Company. In January 1939 the Government decided that the Northern Railroad must, under its contract, run one train a day between San José and Alajuela. A Japanese-owned cotton plantation near Puntarenas was said to be in form for a splendid air base; and Germans, largely in the coffee business, made the government an offer to finance works for enlarging the port of Puntarenas. In July 1939 the United Fruit Company opened a new steel pier, which it had built in eight months, as an outlet for its banana trade, in the abandoned jungle harbor of Quepos on the Pacific.

Nicaragua

Nicaragua, named for an Indian cacique whom the Spaniards under Gil González Dávila from the Gulf of San Miguel found in 1522 in his capital on the shores of a lake only a few leagues from the Pacific Ocean, was occupied in 1523 by Francisco Hernández de Córdova, sent by Governor Pedrárias Dávila from Darien. Córdova founded Granada and León, and thereafter Jesuit missionaries were active in penetrating and settling the country. Pedrárias accused Córdova of disloyalty and, capturing him by surprise at León, executed him in 1526. Pedrárias was shortly thereafter removed as governor of Panama by royal mandate; but on June 1, 1527, he was given the rich post of governor of Nicaragua, and died there in March 1531, at the age of ninety. Bluefields, founded before 1600, was probably originally named for the Dutch filibuster Bleeveldt. By royal ordinance extending and applying the Ordinance of Intendentes of December 4, 1786, Nicaragua was divided into the five districts of León, Matagalpa, El Realejo, Subtiaba, and Nicoya. Nicaragua was included as part of the viceroyalty of New Spain, and was administered as part of Mexico until the fall of Iturbide. Nicaragua formed part of the Central Confederation from its inception on November 22, 1824,[30] and its first constitution of April 8, 1826, provided:

> Art. 2. The territory of the State includes the districts of Nicaragua, Granada, Managua, Masaya, Matagalpa, Segovia, León, Subtiava and El Realejo. Its boundaries are: on the east, the sea of the Antilles; on the north, the State of Honduras; on the west, the Gulf of Conchagua; and on the southeast, the free State of Costa Rica.

On April 30, 1838, a Constituent Assembly at Nicaragua declared that Nicaragua was an independent state, and the second constitution, promulgated November 12, 1838, provided:

> Art. 2. The territory of the State is the same which the province of Nicaragua formerly included; its bounds are on the east and northeast the sea of the Antilles, on the north and

[30] See Sec. 4, this chap., *infra*.

northwest the State of Honduras, on the east and south the Pacific Ocean and on the southeast the State of Costa Rica. The dividing lines of the adjoining States shall be described by a law which shall form part of the Constitution.

Spain acknowledged Nicaragua's independence by a treaty signed at Madrid, July 25, 1850,[31] in which Isabella II renounced:

Art. 1. . . . the sovereignty, rights, and interests which belong to her over the American territory situated between the Atlantic and Pacific seas, with its adjacent islands, formerly known under the denomination of the province of Nicaragua, and now called the Republic of the same name; and also over all other territories which may have been subsequently incorporated with the said Republic.

William Walker of Tennessee sailed from San Francisco, May 4, 1855, at the head of a filibustering expedition and had some military successes in his ambitious effort to establish a slavery-permitting state that should unite Central America, Mexico, and possibly Cuba; but within two years financial difficulties overtook him, and after defeat by Costa Ricans, aided and abetted by agents of Cornelius Vanderbilt, he surrendered on May 1, 1857, to Commander Charles Henry Davis of the United States navy. He returned to the United States, but in November 1857 sailed from Mobile, Alabama, with a second expedition, was unsuccessful in landing, and was arrested by Commander Hiram Paulding of the United States navy and returned to the United States. He sailed with a third expedition from Mobile in August 1860 to Honduras, but was made prisoner by Captain Salmon of the British navy and turned over to the Hondurans who, after a trial, executed him on September 12, 1860.[32]

The third constitution, adopted August 19, 1858,[33] provided:

Art. 1. The Republic of Nicaragua is that which was of old called the Province, and, since the Independence, the State, of Nicaragua. Its territory is bounded on the east and northeast by the Sea of the Antilles, on the north and northwest by the State of Honduras, on the east and south by the Pacific Ocean, and on the southeast by the Republic of Costa Rica. The special Boundary Laws form part of the Constitution.

The fourth constitution, adopted December 10, 1893,[34] provided:

Art. 1, Subd. 5. The boundaries of Nicaragua and its territorial divisions will be determined by law.

The fifth constitution, adopted March 30, 1905,[35] provided:

Art. 1. Nicaragua is a free, sovereign and independent nation; but it considers itself a separated section of the Central American Republic. Consequently it recognizes as a prime necessity the return to union with the other sections of the dissolved Republic.

[31] 39 *British and Foreign State Papers* 1331.

[32] 46 *British and Foreign State Papers* 784–804.

[33] *Recop. de Consts. Vigs.* (de Heredia, Madrid, 1884), II, 303. 72 *British and Foreign State Papers* 1045.

[34] 86 *British and Foreign State Papers* 1090. Other articles amended, Oct. 15, 1896. 94 *British and Foreign State Papers* 385.

[35] *Const. Política de Nicaragua* (Managua, 1905).

War threatened again between Nicaragua and Salvador but was averted. Nicaragua continued to be the storm center of Central American politics and in December 1909 United States Secretary of State Philander C. Knox gave the Nicaraguan chargé d'affaires his passports [36] with the declaration that the administration of President José Santos Zelaya was a blot upon the history of Nicaragua. The Nicaraguan National Assembly in accepting General Zelaya's resignation of December 16, 1909, as president, protested at the policy of intervention by the United States. Nicaragua and the United States signed at Washington on June 6, 1911,[37] a convention approving a loan to be secured by customs receipts under supervision of a collector-general approved by the president of the United States.[38]

The sixth constitution, adopted November 10, 1911,[39] provided:

> Art. 1. Nicaragua is a free, sovereign and independent nation. Its territory, which also includes the adjacent islands, is situated between the Atlantic and Pacific Oceans and the Republics of Honduras and Costa Rica.

On August 4, 1912,[40] United States marines were landed to preserve order. Nicaragua on December 5, 1914,[41] issued a circular of neutrality instructions applying to the World War.

Nicaragua signed the Bryan-Chamorro Treaty with the United States at Washington on August 5, 1914. The United States refused to recognize Federico Tinoco Granados, who seized Costa Rica on January 27, 1917, but he maintained himself in power until August 1919.[42] Nicaragua declared war upon Germany and Austria–Hungary on May 8, 1918.[43] Nicaragua became a member of the League of Nations, November 3, 1920. In August 1925 the United States marines, who had been on guard in Managua for fourteen years, were withdrawn, and in January 1926 President Carlos Solózano and Vice President Juan B. Sacasa were ousted from office by General Emiliano Chamorro, Conservative, whom the United States declined to recognize.[44] There began a fratricidal war which soon involved the presence again of the United States marines, from August 1926 to January 2, 1933, the supervision of the 1928 elections by the

[36] *U. S. For. Rel.*, 1909, pp. 452–459; (1910), 738. *Amer. J. Int. Law*, IV (1910), Supp. 249.

[37] *Amer. J. Int. Law*, V (1911), 1044; V, Supp. 291. *U. S. For. Rel.*, 1912, pp. 1071–1105; 1913, pp. 1034–1067. *For. Aff.*, III (1924), 51. *Rev. gén. de dr. int. pub.* (1912), XIX, 130.

[38] Colonel Clifford D. Ham of Dubuque, Iowa, appointed, November 11, 1911, resigned May 31, 1928. Succeeded in 1928 by Colonel Irving Augustus Lindberg of New York; named by President Somoza on May 14, 1940, Honorary Minister of the Customs Service.

[39] *Const. Política de Nicaragua* (Managua, 1912). 107 *British and Foreign State Papers* 1038. Other articles amended April 5, 1913.

[40] *U. S. For. Rel.* (1912), pp. 993–1132. *For. Aff.*, III (1924), 51.

[41] *Rev. gén. de dr. int. pub.*, XXIV (1917), docs. 227.

[42] *U. S. For. Rel.*, 1917, pp. 301–349; 1918, pp. 229–275; 1919, I, 803–865.

[43] *La Gaceta*, Año XXII, Num. 106, 849 (Managua, May 10, 1918).

[44] *Amer. J. Int. Law*, XX (1926), 543.

United States,[45] and a long behind-the-scenes struggle between the United States and Mexico for a controlling influence in Nicaragua.

President Calvin Coolidge on March 31, 1927,[46] sent Henry L. Stimson to Nicaragua, and he reported on May 15 that the civil war was ended. On May 15, 1927,[47] President Adolfo Díaz asked the president of the United States to prepare a proper election law, to secure supervision by impartial Americans over the elections to be held in Nicaragua in October 1928, to assist in training and directing an impartial and non-partisan constabulary, and in other ways to aid in tranquillizing the sorely disturbed condition of the country. President Coolidge agreed to have the United States supervise the voting, and by Nicaraguan decree of March 21, 1928, General Frank Rose McCoy of the United States army was named president of the National Board of Elections.

In December 1935 Diodo Kyogio Kaisha, Ltd., of Tokyo approached Nicaragua seeking a fishing concession off the west coast, with headquarters at Corinto; and it was objected by Salvador, at whose reported similar grant three months before Nicaragua had protested, that such concession by Nicaragua would be contrary to the spirit of the ninety-nine-year privilege given the United States for naval bases in the Gulf of Fonseca. On June 27, 1936,[48] Nicaragua gave notice of her withdrawal from the League of Nations. In June 1936 General Anatasio Somoza, at the head of the National Guard, attacked the presidential palace and took over the government from President Juan B. Sacasa, who went into exile. Chile and Peru expressed to the United States the hope that she would not intervene in Nicaragua's internal affairs, and Secretary of State Cordell Hull replied that the United States had not been approached by President Sacasa. On April 8, 1937, President Somoza decreed the nationalization of the Pacific Railroad of Nicaragua. In December 1937 the United States gave Nicaragua a check for $18,508.55 for personal and property damage to various claimants incurred during the occupation by the United States marines from 1922 to 1931.[49] On August 3, 1939, President Somoza denied he was urging a general Central American union, but proposed a diplomatic union, with one legation in each foreign capital for all five Central American republics. On November 15, 1939, President Somoza announced the completion of arrangements for a credit of $2,000,000 at 5 per cent from the United States Import and Export Bank to build a section of the Pan-American highway. Nicaragua declared her neutrality in the Hitler war on

[45] *Amer. J. Int. Law*, XXIII (1929), 23–157. *Ann. Amer. Acad. Pol. & Soc. Sci.*, CXXXII (1927), 134, 142, 153. *For. Aff.*, XI (1933), 696–705.

[46] *Amer. J. Int. Law*, XXI (1927), 539.

[47] *Amer. J. Int. Law*, XXII (1928), Supp., 118. *For. Aff.*, VII (1929), 488–496.

[48] Effective June 26, 1938. *League of Nations Monthly Summary* (1936), XVI, 186. *Amer. J. Int. Law*, XXXII (1938), 149.

[49] H. R. 2923, *Cong. Rec.*, 75th Cong., 1st Sess., LXXXI, IV, 3859. Act of May 6, 1937, c. 162. 50 Stat. L. 133.

September 8, 1939. Major Charles L. Mullins, Jr., United States army, on leave, was commissioned a colonel in the Nicaraguan army, and on February 2, 1940, opened as director a new military academy in Managua.

Boundary

As usual with adjoining former Spanish colonies, the question of the boundary line between Costa Rica and Nicaragua dates nearly or quite from the beginning of their independence, and turns somewhat on the exact extent of vague and disputed royal administrative districts. Under the early Spanish regime Costa Rica had a governor, independent as to war and justice matters, but dependent in fiscal affairs upon the intendant at León, Nicaragua, who controlled also Nicaragua, with Nicoya and Guanacaste, under the captain-general of Guatemala. The San Juan River was little known, and although there were garrisons at San Carlos and El Castillo, it was not until February 6, 1796, that it was thought wise to protect its mouth and establish the town of San Juan de Nicaragua (at about 10°55′ N latitude, 83°40′ W longitude) as an entry port, under the customs authorities at Granada on Lake Nicaragua.[50] During the winning of independence and the federation [51] period, nothing definite was done as to boundaries between the former provinces, except that Nicoya was incorporated in Costa Rica; Soconusco (formerly part of Chiapas) joined Guatemala; Chiapas joined Mexico and Guanacaste, for a while separate, in 1825 was annexed to Costa Rica, in 1826 became a part of Nicaragua, and in 1839 joined Costa Rica again. In 1842 the legislative assembly of each country declared the department of Guanacaste to be a part of its nation.[52] Costa Rica used the Sarapiquí River to reach the port of San Juan. In efforts to settle pending difficulties, chiefly as to the boundary, embassies went from Costa Rica to Nicaragua in 1838 and 1848 and from Nicaragua to Costa Rica in 1846, and the United States and Great Britain attempted on April 30, 1852, to arrange a settlement; but except for long diplomatic arguments, much printed discussion, and several proposed treaties, they accomplished nothing.[53] Finally on January 28, 1854, Felipe Molina for Costa Rica and José de Marcoleta for Nicaragua, ministers to the United States for their respective countries, signed at Washington a preliminary convention [54]

[50] Lake Nicaragua, the largest body of fresh water between Lake Superior and Lake Titicaca in Peru, roughly parallel to and at its nearest 12 miles from the Pacific Ocean, is 100 miles long and 40 miles wide, with an average depth of 40 feet.

[51] See Sec. 4, this chap., *infra*.

[52] Nicaragua, Decree of May 24, 1842. Costa Rica, Decree 88 of Aug. 25, 1842. *Col. de las Leyes, Decrs. y Ords. de Costa Rica* (San José, 1861), VII, 374.

[53] Felipe Molina, *Memoria sobre las Cuestiones de Límites entre Costa Rica y Nicaragua* (Madrid, 1850; in French, Paris, 1850; in English, Washington, 1851). *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 125. 41 *British and Foreign State Papers* 882. *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 337, 350, 460, 468; (1934), IV, 210, 215, 357, 419.

[54] *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 137. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 323.

upon boundaries and interior navigation, by which it was agreed that (Article 1) unfortunate differences should be terminated as soon as possible by direct agreement or the decision of a friendly power; that (Article 2) if pending negotiations failed, the questions should be submitted without any reservation to the arbitral judgment of the emperor of the French or any other government agreed on at the exchange of ratifications; that (Article 4) meantime the *status quo* should be maintained strictly, with no concession of land, navigation privileges, or of any other sort, on the disputed rivers and lake; and that (Article 5) although Nicaragua had made contracts for the opening of an interoceanic canal, with privileges which Costa Rica considered affected her rights, yet Costa Rica would not oppose Nicaragua's fulfilling her obligations in case of the execution of the projected canal works; and Nicaragua would put no obstacle in the way of the execution of the contracts which Costa Rica might have made for the navigation of the Sarapiquí River.

General José María Cañas for Costa Rica and Gregorio Juárez for Nicaragua signed at Managua on July 6, 1857, an agreement setting out the proposed boundary between Costa Rica and Nicaragua. On December 8, 1857, General Cañas and Emiliano Quadra for Costa Rica and President General Tomás Martínez for Nicaragua signed at Rivas, Nicaragua, a treaty of peace [55] (recited to be especially desirable under the circumstances of their common independence being threatened by a new invasion of filibusters, who had already landed on the San Juan River) in which it was agreed that (Articles 1, 6) Costa Rica should return to Nicaragua El Castillo Viejo and Tortuga Point, that (Article 7) the countries should mutually forego their claims on each other, that (Article 8) the boundaries should be those of the Cañas-Juárez treaty of July 1857 or the ancient lines of the Partido de Nicoya, as Costa Rica should prefer, and that (Article 9), if Nicaragua should cease to be bound by the transit convention made for her by Antonio José de Irisarri in the United States with the Canal company, Nicaragua would make no further contract concerning transit without hearing first the opinion of the other governments of Central America. A boundary treaty was signed at San José on April 15, 1858,[56] which provided:

> Art. 2. The dividing line of the two Republics, starting from the North Sea, shall begin at the extremity of Castilla Point, at the mouth of the San Juan river, in Nicaragua, and shall continue along the right bank of said River to a point 3 English miles from El Castillo Viejo,

[55] *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 141. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 329. 49 *British and Foreign State Papers* 1222.

[56] By José María Cañas for Costa Rica and Máximo Jerez for Nicaragua. Ratified by Costa Rica, April 16, 1858, by Nicaragua Executive in April 1858; ratifications exchanged at Rivas, April 26, 1858; Nicaragua Legislative Decree approving treaty, June 4, 1858. *Col. de Trats. Int. de Costa Rica* (San José, 1892), I, 97. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 335. *Dipl. Corr. of the U. S.* (Manning, Washington, 1934), IV, 677. 48 *British and Foreign State Papers* 1049.

measured from the exterior fortifications; thence in a curve, with center in the works of El Castillo and distant 3 English miles therefrom, to a point 2 miles from the river bank at the waters above El Castillo; thence towards the Sapoá river, which empties into Lake Nicaragua, in a course distant always 2 miles from the right bank of the San Juan river, with its turnings, to its origin in the Lake and along the right shore of said Lake to the aforesaid Sapoá river, where this line parallel to the said banks terminates; from the point where it meets the Sapoá river, which as stated should be 2 miles from the Lake, in an astronomically straight line to the center point of Salinas Bay in the South Sea, where the demarcation of territory of the two Republics terminates; . . .

Further, (Article 3) it was agreed to mark this line, with power in the commissioners to deviate slightly from the described lines in case of finding natural landmarks; (Article 4) the Bays of San Juan del Norte and of Salinas were to be common to both republics, who consequently were both bound to their defense; (Article 5) until Nicaragua should recover full possession of all her rights in the port of San Juan del Norte, Castilla Point was to be for common and entirely equal use, and without collection of port taxes by Costa Rica from Nicaragua; (Article 6) Nicaragua was to have exclusive dominion and full power over the waters of the San Juan River, from the lake to the Atlantic, but Costa Rica was to have perpetual rights of free navigation in those waters; (Article 7) this territorial division was not to prejudice any obligations previously contracted by Nicaragua in political treaties or in canalization or transit contracts; (Article 8) if the canalization or transit contracts previously made by Nicaragua for any reason ceased to be in force Nicaragua was not to make any new ones upon such subjects without first hearing the opinion of the government of Costa Rica; if the enterprise caused no injury to the rights of Costa Rica, such opinion to be advisory; (Article 9) no act of hostility was to be permitted in the port of San Juan del Norte nor in the San Juan River nor Lake Nicaragua; (Article 10) the preceding article being especially important, it was to be observed under the special guarantee of the mediator government (of Salvador); and (Article 11) the two republics agreed mutually to forego all claims.

Both governments, perceiving the advantages of improving a port on the Atlantic, agreed on a scientific survey [57] of the Colorado and San Juan rivers, and, when the engineer's report had been made, following the Nicaragua–French canal agreement in Paris and the Costa Rica–Nicaragua canal treaty of June 18, 1869,[58] they signed at San José a treaty on June 21, 1869.[59] By this treaty Costa Rica (Article 1) granted to Nicaragua the waters of the Colorado River, to be wholly

[57] Convention of July 13, 1868. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 213. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 365.

[58] See Sec. 13, this chap., *infra*.

[59] Signed by Agapito Jiménez for Costa Rica and Mariano Montealegre for Nicaragua. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 347. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 403.

or partly turned out of their existing course and discharged into the San Juan River, for the reëstablishment or improvement of the port of San Juan del Norte (or Greytown), which (Articles 3, 4) was to be a free port for Costa Rica; (Article 2) Nicaragua would share interoceanic freight proceeds on the river with Costa Rica; and (Article 6) existing boundary treaties were ratified, with the provision that any question which might arise under them or the present treaty should be submitted to the arbitration of the government of the United States.

These arrangements still did not put an end to the dissatisfaction on both sides with the boundary agreement; [60] and after further negotiations [61] the two countries signed at Granada on February 5, 1883,[62] a new boundary treaty which provided substantially as in that of 1858, except at the beginning:

> Art. 1. The boundary line between the Republics of Costa Rica and Nicaragua begins on the right bank of the river Colorado, at its point of emptying into the Atlantic, and continues by said right bank to the junction of that river with the San Juan, and in prolongation of the right bank of the San Juan river to a point distant 3 English miles from El Castillo Viejo, measured from the outside fortifications of said Castillo; thence in a curve, whose center is El Castillo and which is distant 3 English miles for its whole length, to a point which is distant 2 miles from the river bank, at the waters above El Castillo; thence towards the Sapoá river, which empties into Lake Nicaragua, following a course which is always distant 2 miles as well from the San Juan river to its origin in the Lake as from the Lake, thereafter, to the junction of said Sapoá river; thence from a point parallel to the junction of the Sapoá and 2 miles from it, by an astronomically straight line to the center point of Salinas Bay, in the South Sea, where the line of demarcation terminates. . . .

Further, (Article 2) it was agreed to mark this line; (Article 3) Nicaragua was to have eminent dominion and full power over the San Juan and Colorado rivers and Lake Nicaragua, but Costa Ricans were to have the perpetual right of free navigation of them and of the bay and port of San Juan del Norte for interior commerce; as Nicaraguans were to have over the Costa Rican parts of the Sarapiquí, San Carlos, and Frío rivers; (Article 4) Costa Rica was to be permitted to open in Nicaraguan territory roads necessary for the importation and exportation of goods over the lake, rivers, and port, without pay for waste lands and by arrangement with the proprietors of occupied lands; (Article 5) Salinas Bay was to be common to the two republics, who consequently were both bound to its defense; (Article 6) no act of hostility was to be permitted in the port and bay of San Juan del Norte or in the San Juan and Colorado rivers, or in the territory between the rivers and lake and the boundary line, or in the San Carlos, Sarapiquí,

[60] Manuel M. de Peralta, *El Río de San Juan* (Madrid, Paris, 1882). Manuel M. de Peralta, *Costa Rica, Nicaragua y Panamá* (Madrid, Paris, 1883). *U. S. For. Rel.*, 1873, II, 732–744; 1875, I, 139, 152, 168; 1883, p. 61; 1893, pp. 281–294.

[61] *Cf.* Treaty of Aug. 26, 1873, between Guatemala, Nicaragua, and Salvador. See Sec. 4, this chap., *infra*.

[62] Signed by Antonio Zambrana for Costa Rica and Francisco Alvarez for Nicaragua. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 295. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 437. *U. S. For. Rel.*, 1883, p. 61.

and Frío rivers or in Salinas Bay; (Article 7) citizens of both republics were to have the right to cultivate the territory of both, especially that between the San Juan and Colorado rivers and the banks of the Colorado and Lake Nicaragua; (Article 8) Nicaragua was to be permitted to turn aside the course of the waters of the Colorado, diverting them to the San Juan, in which event, once established, the right bank of the San Juan River to three miles from El Castillo Viejo was to be the first part of the boundary line; (Article 9) if an interoceanic canal were built, such canal for its whole length from sea to sea was to be the true boundary between Costa Rica and Nicaragua, provided it did not deviate more than six geographic miles from the dividing line fixed in the treaty. Nevertheless, dominion over the canal was to belong exclusively to the republic whose territory it crossed, the citizens of both sharing equally however in the advantages of use of the canal for freight and passengers; (Article 14) whenever there was opportunity to make an agreement for the Central American union, both nations were to undertake to further it and to give to each other full notice of all proceedings; (Article 15) any differences of whatever origin or character which arise between the republics were to be submitted to arbitration.

On January 19, 1884, along with a convention concerning the construction of the interoceanic canal,[63] the two republics signed another boundary treaty [64] which provided:

> Art. 1. The boundary line between Costa Rica and Nicaragua is the right bank of the Colorado river from its emptying into the Atlantic to its departure from the San Juan river and then the right bank of the latter to a point distant from El Castillo Viejo 3 English miles, measured from the exterior fortifications; thence the arc of a circle which is distant at all points the same 3 English miles from the fortifications and ends on the same right bank of the San Juan; thence this same bank to a point 3 English miles distant from a point on the bank opposite San Carlos; thence another arc of a circle 3 English miles in radius and for center the aforesaid point opposite the fort; thence the mouth of the Frío river in Lake Nicaragua, following its bank to the emptying of the Sapoá river; and from that point in an astronomically straight line to the center of Salinas Bay marked by the intersection of its major and minor axes; . . .

It further provided that (Article 2) until the Nicaraguan interoceanic canal was open to universal traffic Costa Rica was not to take possession of a zone from the emptying of the Frío River to that of the Sapoá and two English miles in width measured from the shore of the lake; (Article 3) the foregoing restriction was to cease if Costa Rica constructed for herself or by any company a railroad to connect with the port of Limón reaching the lake shore or the bank of the Frío River

[63] See Sec. 13, this chap., *infra*.

[64] Signed by José María Castro for Costa Rica and Vicente Navas for Nicaragua. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 365. *Col. de Trats. de Nicaragua* (Bonilla, Managua, 1909), 481. Disapproved (Decr. Leg. 29), July 26, 1885. *Col. de Leyes de Costa Rica de 1885* (San José, 1886), 298.

or the San Juan River; (Article 4) if such railroad were constructed, Nicaragua was to be permitted to establish a customhouse at the point of departure of such line, on the shore of the lake or either of said rivers; (Article 5) Nicaragua might build on the right bank of the San Juan River and on the Colorado River hydraulic or other works which it deemed desirable to improve their navigation; in case the waters of the Colorado were diverted to the San Juan, the right bank of the latter to three English miles before reaching El Castillo Viejo was to be the first part of the boundary line instead of the right bank of the Colorado provided in Article 1. Further, (Article 6) in the zone described in Article 2, as on the right bank of the San Juan River between El Castillo Viejo and San Carlos fort, there were to be reserved for the Canal company the lots of land, easements, and privileges granted by Nicaragua in the contract of April 24, 1880, with A. G. Menocal, and Nicaragua maintained the same reservation in case by reason of lapse such contract was replaced by another with the same purpose; (Article 7) in general the rights which Costa Rica acquired by this treaty were not to embarrass in any way the free action of Nicaragua in making new contracts for the purpose of a canal across the isthmus, if that made with Sr. Menocal should lapse; but Nicaragua promised to provide in them for the same privileges and easements which they obtained for Nicaraguans; (Article 8) boundary commissions to mark the line were to be named in six months; (Article 9) Costa Rica had the right to open in Nicaraguan territory roads necessary for the importation or exportation of goods by Lake Nicaragua, the Colorado River, and the river and port of San Juan del Norte, and consequently might forever occupy the surface of all ground comprised in such roads, without pay for vacant lands but, for private parcels, with the consent of the owners or expropriation, according to Nicaraguan laws; (Article 10) Salinas Bay on the South Sea was to be common to both republics and consequently both were bound to its defense, and Costa Rica was also to help with the defense of the Bay of San Juan del Norte if so requested by Nicaragua; (Article 11) Costa Ricans were to have the perpetual right of free navigation of the waters of the lake and of the San Juan and Colorado rivers, on the same terms as Nicaraguans (the eminent dominion and full power over said rivers and lake belonging to Nicaragua), and also free use of the bay and port of San Juan del Norte on the same terms as Nicaraguans. Nicaraguans were to have the same right of navigation for the same uses and subject to the same rules upon the portions of the Sarapiquí, San Carlos, and Frío rivers which crossed the territory of Costa Rica, that republic retaining in full force its eminent dominion and full power over said rivers; (Article 12) citizens of both republics were to have the right to cultivate the territory of both, especially that between the San Juan and

Colorado rivers, and the banks of the Colorado and Lake Nicaragua; (Article 13) no act of hostility was to be permitted in the port and bay of San Juan, or in the San Juan and Colorado rivers or in the territory between those rivers and the lake and the boundary line, or in the San Carlos, Sarapiquí, and Frío rivers, or in Salinas Bay.

This treaty was rejected by Costa Rica, and the two nations, with the friendly mediation of the Guatemalan government, signed at Guatemala City on December 24, 1886,[65] an arbitration convention which recited that both republics desired to put an end to the question of the validity of the boundary treaty of April 15, 1858, which had been discussed since 1871, and provided that (Article 1) the pending question should be submitted to arbitration (Article 2) by the president of the United States; (Article 3) if he would not accept, by the president of Chile; (Article 4) if unfortunately he also would not accept, the parties were to elect other arbitrators; (Article 5) the decision, to be valid, to be within six months of the close of the presentation of the written cases. If the award found the treaty valid (Article 6), it was to state whether Costa Rica had the right to navigate the San Juan River with war or fiscal service vessels, and was to settle all other points of doubtful interpretation which either party might find in the treaty and have notified to the other within thirty days of the exchange of ratifications; (Article 7) the arbitral decision, whatever it might be, was to be taken as a perfect and obligatory treaty between the parties without any appeal, and was to begin to be executed within thirty days after notice of it to both governments. If the treaty were declared null (Article 8), both governments within one year were to agree to fix the dividing line of their respective territories; and if this was not possible, within the following year were to sign a convention to submit the question of boundaries to a friendly government. From the time the treaty might be declared null, and while there was no other agreement between the parties, the rights established by the treaty of April 15, 1858, were to be provisionally respected; (Article 9) pending the decision, Costa Rica was to suspend the operation of her decree of March 16, 1886,[66] concerning the navigation of the San Juan River by a customs guard steamer. If the treaty were found valid (Article 10), the two governments were within ninety days each to name two commissioners (four in all) to mark the dividing line established in Article 2 of said treaty.

[65] Signed by Ascensión Esquivel for Costa Rica and José Antonio Román for Nicaragua, ministers to Guatemala for their respective countries. Ratified by Costa Rica (Decr. Leg. 6), May 12, 1887; ratified by Nicaragua, March 28, 1887; ratifications exchanged at Managua, June 1, 1887. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 391. *Ibid.* (San José, 1896), 183. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 501. *Col. de Disps. Leg. y Adm. en 1887* (San José, 1888), I, 297. 77 *British and Foreign State Papers* 476. *U. S. For. Rel.*, 1887, pp. 82, 85, 89–91, 107–110, 115, 124, 267–269.

[66] 78 *British and Foreign State Papers* 803.

For a short time after the signing of this agreement for arbitration, it seemed as if the vexed boundary question might be settled by direct agreement between the parties, for the two republics signed at Managua on July 26, 1887,[67] a boundary treaty according to which (Article 1) Nicaragua withdrew the objections presented to the validity of the boundary treaty of April 15, 1858, having obtained from her Congress the second ratification, which was indispensable; (Article 2) to make the San Juan River navigable at all seasons of the year, Costa Rica consented that there be taken from the Colorado River the water necessary, to be turned into the other river; (Article 3) Costa Rica agreed to contribute one-quarter of the necessary costs of improving the navigation of the San Juan River from its separation from the Colorado to its emptying into the Bay of San Juan del Norte; (Article 4) Nicaragua granted to Costa Ricans the perpetual right of free commercial navigation in Lake Nicaragua and in that part of the San Juan River where at the time they did not have that privilege, but the privilege granted by Nicaragua to F. A. Pellas by contract of March 16, 1877, to navigate said waters with steamboats was to be respected; (Article 5) Costa Rica was to have the right to share in the income from the interoceanic canal along the San Juan River, but the question of what part of the proceeds Costa Rica should receive was to be submitted by both governments to the decision of an arbitrator, who was to decide with regard to the actual route adopted and the contributions made by Costa Rica and by Nicaragua of lands, waters, and rights, to the enterprise. Costa Rica accepted, in reference to her rights, the concession granted by Nicaragua to the Nicaragua Canal Company in the contract of March 23, 1887. Further (Article 6), the points of doubtful interpretation of the treaty of April 15, 1858, which had presented themselves up to that time, were to be settled as follows: First, Castilla Point was then understood as the end of the right bank of the mouth of the San Juan River nearest the port of that name; when the improvement of the river spoken of in Article 2 should be made, Castilla Point was to be considered the end of the right bank of the San Juan River, as finished. Second, the central point of Salinas Bay was to be determined by the intersection of its two axes, major and minor. Third, the right granted to Costa Rica to navigate for commercial purposes the San Juan River from its mouth to three English miles below El Castillo Viejo did not include the right to navigate with vessels of war or fiscal service. Nicaragua was freely to make canal

[67] Signed by President Bernardo Soto and Foreign Minister Cleto González Vásquez for Costa Rica and by President Evaristo Carazo and Foreign Minister Fernando Guzmán for Nicaragua. Ratified by Costa Rica, July 26, 1887; rejected by Nicaraguan Senate, September 1887. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 425. *U. S. For. Rel.*, 1887, pp. 136, 140, 143, 269–270, 911–912. Manuel M. de Peralta, *El Canal Interoceánico de Nicaragua y Costa Rica* (Bruselas, 1887).

or transit concessions (Article 7), so far as they did not prejudice rights of Costa Rica, without necessity of hearing the consultative opinion of which Article 8 of the treaty of April 15, 1858, spoke, and which Costa Rica renounced; (Article 9) the governments were to name respective commissions to mark the boundary line.

This treaty, however, like its predecessors, failed of ratification; and the arbitration provided for by the convention of December 24, 1886, was put under way. President Grover Cleveland of the United States was asked on July 30, 1887, if he would act as arbitrator. He accepted on the same day;[68] the cases on both sides were finally submitted and closed in December 1887,[69] and the arbitrator handed down his award on March 22, 1888,[70] upholding the validity of the treaty of April 15, 1858, and interpreting eleven doubtful points raised concerning it. Thereupon Costa Rica proceeded to sign on July 31, 1888, with the Associación del Canal de Nicaragua an agreement (called the Zeledón-Menocal contract) for the excavation of an interoceanic canal, which Nicaragua at once objected was in excess of Costa Rica's powers; and this and other difficulties prevented execution of the award. After further discussion, the two republics signed at San José on January 10, 1889,[71] a further arbitration convention in which they agreed (Article 1) to submit to the arbitral decision of the president of the United States the question raised by Nicaragua against Costa Rica concerning the Zeledón-Menocal contract; (Article 2) the arbitrator to decide whether Costa Rica in conformity with the boundary treaty of April 15, 1858, and the current arbitral award of March 22, 1888, had the power to make the Zeledón-Menocal contract, and, if it had, whether the rights which such treaty and award recognized in Costa Rica were transferred in prejudice to the rights of Nicaragua by Costa Rica in making such contract, with indication of the article or articles in which said rights were prejudiced and in what way. The said Zeledón-Menocal contract was to be considered null if the award denied absolutely to Costa Rica power to make it (Article 3), or such articles were to be considered null as the award found transferred rights to the prejudice of Nicaragua. If the designated arbitrator did not accept (Article 5), the governments were to name another within ninety days, (Article 7) the arbitral decision, whatever it might be, to be considered a perfect, obligatory, and perpetual treaty between the parties, without any appeal. Ratifications of

[68] *U. S. For. Rel.*, 1887, pp. 267–269, 910–911.

[69] Pedro Pérez Zeledón, *Informe . . . de Costa Rica* (Washington, 1887; in English, Washington, 1887). Horacio Guzmán, *The Case of the Republic of Nicaragua* (Washington, 1888). Pedro Pérez Zeledón, *Réplica al Alegato de Nicaragua* (Washngton, 1887; in English, Washington, 1887).

[70] *Laudo del Arbitrador é Informe de George L. Rives* (Washngton, 1888). *Amer. J. Int. Law*, XXX (1936), 452. 79 *British and Foreign State Papers* 555. *U. S. For. Rel.*, 1888, I, 134, 455–469. *Arch. Dipl.* 2e Sér., XXVI (1888), 221.

[71] Signed by Manuel J. Jiménez for Costa Rica and General Isidro Urtecho for Nicaragua. Ratified by Nicaragua, April 4, 1889; ratified by Costa Rica, April 24, 1889. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 515. *Rev. de dr. int. et de lég. comp.* (1902), V, 574. *Arch. Dipl.*, 2e Sér., XXIX (1889), 347.

this convention were not exchanged before April 30, 1889, as stipulated in it, and both parties considered the agreement never in effect.

Presumably because of this further arbitration pending, but reciting that the time previously specified for carrying out the original award of March 22, 1888, had been found too short, the two republics signed a supplementary boundary treaty at Managua on December 23, 1890,[72] which agreed (Article 1) to extend for a second term of thirty months the time for surveying and marking the line. The commissioners were to start the line (Article 2) on the Atlantic by a straight line from a point on the shore at the seaside distant two hundred meters east of the Malecón (breakwater) which the Canal company was building and terminating at the end and on the right bank of the nearest channel of the San Juan River; from this point it was to run along the right bank of such channel to the right bank of Animas Channel and of the San Juan River, continuing to the point which the treaty of 1858 indicated. The aforesaid two hundred meters were to be measured on the coast as it was on the date on which the actual demarcation began, and so that the line which determined the two hundred meters formed a right angle with the Malecón; the commissioners were to fix the starting point on the shore at the seaside by means of coördinate lines. To avoid future difficulties with regard to accession to the land which belonged to Nicaragua east of the Malecón (Article 3), there was to be drawn a straight line from the starting point of the boundary line towards the true north, and all land found west of such line was to belong to Nicaragua; (Article 5) Nicaragua was to have the right of navigation in Harbor Head Bay and in that part of Animas Channel which was in Costa Rican territory and opened into said bay on the same terms on which Costa Rica had such right in the San Juan River, to three English miles from El Castillo Viejo; (Article 7) that Nicaragua might have sufficient non-rocky shore on Salinas Bay to load and unload goods; the dividing line between the two republics at this point was to start from the point on the Sapoá River determined in said award, but instead of going to the center of Salinas Bay, in accordance with the treaty of April 15, 1858, it was to terminate at another point on the shore two nautical miles southeast from Punta Mala.

A further boundary convention concerning the marking of the line was signed with the mediation of Salvador by the two republics at San Salvador on March 27, 1896,[73] providing that (Article 1) each government should name a commission of

[72] Signed by José María Castro for Costa Rica and Benjamin Guerra for Nicaragua. Ratified by Nicaragua, Dec. 9, 1891. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 431. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 523.

[73] Signed by Leónidas Pacheco for Costa Rica and Manuel Coronel Matus for Nicaragua, Ministers to Salvador for their respective countries. Ratified by Costa Rica, Decree 45 of July 9, 1896; ratified by Nicaragua, Sept. 25, 1896; ratifications exchanged at San José, Dec. 17, 1896. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 547. *Rev. de dr. int. et de lég. comp.* (1902), IV, 571, 629. *U. S. For. Rel.*, 1896, pp. 100–102, 371–374; 1897, pp. 111–116, 330.

two engineers or surveyors to trace and mark duly the boundary line as established by the treaty of April 15, 1858, and the arbitral award of President Cleveland; that (Article 2) an engineer named by the president of the United States should be given power to decide finally any differences which arose between the other commissioners; that (Article 4) the marking of the line was to be completed in twenty months, the commissioners to meet at San Juan del Norte and begin their work on the line from the Atlantic Coast. The decision of the engineer umpire (Confederate) General Edward Porter Alexander of Georgetown, South Carolina (a personal friend of President Cleveland), was called for on five occasions.[74]

Costa Rica and Nicaragua signed with the United States on December 1, 1900,[75] identical but separate executive agreements relative to the construction of an interoceanic canal which provided that, when the president of the United States should be authorized by law to acquire control of such portions of their territory as might be necessary for a canal from near San Juan del Norte to Brito, the United States would enter into negotiations with each nation to settle the plan and necessary agreements in detail, the course and terminals of such canal to be those stated in the treaty between the United States and Great Britain of February 5, 1900. The signature by Nicaragua with the United States at Managua on February 8, 1913,[76] of a secret canal convention aroused strong protest in Costa Rica as soon as she heard of it. After some discussion in the United States Senate, the treaty was withdrawn, but the Bryan-Chamorro Treaty was signed at Washington on August 5, 1914, and Costa Rica, believing it to be of the same general nature, continued her objection, asserting it to be in conflict with the Cañas-Jerez Treaty of 1858, the Cleveland award of 1888, and the Central American Treaty of Peace and Friendship signed at Washington, December 20, 1907.[77] Nicaragua delayed or declined answering Costa Rica, who enlisted the support of Honduras and Salvador, and won some sympathy in the United States. John N. Popham, a Washington attorney interested in the exportation of manganese ore from Costa Rica, succeeded in getting Senator Jacob H. Gallinger of New Hampshire to introduce in the United States Senate on June 29, 1914,[78] a resolution calling for investigation and protection of the rights of Costa Rica as affected by the pending treaty with Nicaragua. The resolution, with a letter from Popham, was referred to the Committee on Foreign Relations and nothing

[74] Decisions of Sept. 30, 1897, Dec. 20, 1897, March 22, 1898, July 26, 1899 and March 10, 1900. *U. S. For. Rel.*, 1896, pp. 371–374; 1897, pp. 111–116, 419–421.

[75] Signed by John Hay and Joaquín Bernardo Calvo. *U. S. Treaty Series*, No. 64. *Treaties of the U. S.* (Malloy, 1910), I, 351. *U. S. For. Rel.*, 1914, p. 965; 1916, pp. 820, 831, 837, 846.

[76] See Sec. 13, this chap., *infra*.

[77] See Sec. 4, this chap., *infra*.

[78] S. Res. 409. *Cong. Rec.*, 63d Cong., 2d Sess., LI, II, 11285.

more was heard of it directly, but added to press and other comment it may have had some effect, for when the Senate ratified the Bryan-Chamorro Treaty on February 18, 1916,[79] it was with an amendment that "nothing in said convention is intended to affect any existing right of any of the said named States" (Costa Rica, Honduras, and Salvador). On March 1, 1916, in answer to notes from Manuel Castro Quesada, Costa Rica's minister in Washington, Secretary of State Robert Lansing wrote him that in view of the "explicit declaration by Congress, I am unable to perceive any ground for protest on the part of your Government."

Costa Rica was still not satisfied, and on March 24, 1916, she commenced action against Nicaragua in the Central American Court of Justice.[80] The Court on May 1, 1916, made an order admitting the complaint, requiring Nicaragua to answer within sixty days and directing both governments to maintain the *status quo* that had existed between them prior to the treaty that gave rise to the controversy, but refused to order a notification to the United States, since that government was not a party to the litigation.[81] The Nicaraguan member of the Court, Judge Daniel Gutiérrez Navas, dissented from this order. Nicaragua answered on August 1, 1916, denying the competence of the Court,[82] with notice that if the Court made an adverse decision Nicaragua would not abide by it, and protested again on September 7 and September 9. On September 22 the Court voted on fourteen interrogatories framed by its president, five as to the jurisdiction of the Court being unanimous, and with Judge Gutiérrez Navas alone in opposition on the other nine. The decision based on these votes, handed down at San José on September 30, 1916,[83] with a long opinion, followed later by Judge Gutiérrez Navas' dissent, declared that:

> Nicaragua has violated, to the injury of Costa Rica, the rights granted to the latter by the Cañas-Jerez Boundary Treaty of April 15, 1858, by the Cleveland Award of March 22, 1888 and by the Central American Treaty of Peace and Amity of Dec. 20, 1907; and
>
> Respecting the prayer in the complaint asking that the Bryan-Chamorro treaty be declared null and void, this Court can make no declaration whatsoever.

Nicaragua repeated her refusal to abide by the decision,[84] and on November 24, 1917,[85] sent a statement to the other Central American states, contending that the Court had exceeded its powers. A new agreement between Costa Rica and

[79] See Sec. 14, this chap., *infra*.

[80] *Demanda, Anexos, Costa Rica contra Nicaragua*. (San José, 1916; in English, Washington, 1916). *U. S. For. Rel.*, 1916, pp. 811–898. *Rec. des Cours* (1932, II), XL, 667.

[81] *Amer. J. Int. Law*, XXI (1927), 22n.

[82] Reply by the Court, Nov. 9, 1916. *Amer. J. Int. Law*, XI (1917), Supp. 3.

[83] Sentencia, 12 *El Foro* 353 (San José, Dec. 15, 1916; in English, Washington, 1916). *La Gaceta* (Costa Rica, Oct. 7, 1916). *Mem. del Sec. de Rels. Ext. de Honduras*, 1915–16 (Tegucigalpa), Anexo, Num. 8, 171–187. *Amer. J. Int. Law*, XI (1917), 156, 181. *Rec. des Cours* (1932, III), XLI, 283.

[84] A French writer remarks that this case is the only one known where a state has baldly refused to execute a decision in spite of the protests of the other state; and that the result of this affair was the closing of the Court. Eduard Hambro, *L'Execution des Sentences Internationales* (Paris, 1936), p. 24.

[85] *U. S. For. Rel.*, 1917, p. 1104. *Amer. J. Int. Law*, XXV (1931), 328.

the United States for the same purpose as the executive agreement of December 1, 1900, concerning the interoceanic canal was signed at Washington on February 1, 1923,[86] submitted by President Warren G. Harding to the United States Senate on February 3, 1923, debated in executive session, and finally laid aside. On April 15 it was withdrawn by President Julio Acosta García from the Costa Rican Congress. It has not been ratified by either country. Costa Rica and Nicaragua opened negotiations in 1939 as to canalization of the San Juan del Norte River and, after a survey and report by United States Army engineers, Foreign Minister Tobías Zúñiga Montúfar of Costa Rica signed with Manuel Cordero Reyes, Nicaraguan minister, at San José on April 15, 1940, a treaty for canalization and development of the San Juan as a common waterway. The entire land and water boundary is 186 miles long. Costa Rican lands in a zone two hundred meters (656 feet) wide along the frontier with Nicaragua are inalienable.[87]

The existence of a large lake with rivers running from it to each ocean formed a natural division so unmistakable as practically to remove this boundary from the usual field of discussion as to the location of the dividing line between the ancient Spanish administrative districts; but the very presence of these waterways with their great potential value as the channel for a lucrative interoceanic canal made one nation the more eager to obtain, and the other the more reluctant to give, a share in the prospective streams of gold. Although the theoretically disputed, but actually long-established, boundary ran everywhere along or inland from the south banks, the margin was too narrow for the state on the north side to be able to grant freely all that the prospective canal builders would need; and the conflicting firm resolves to hold and to have prolonged the border strife for a hundred years, with no end yet in sight. Probably the seeking nation will at last be content with a share of the proceeds of the concession which may be acceptable to the powerful optionee, and the neutral zone on either side of the canal when completed will presumably settle the struggle forever by separating the neighbors.

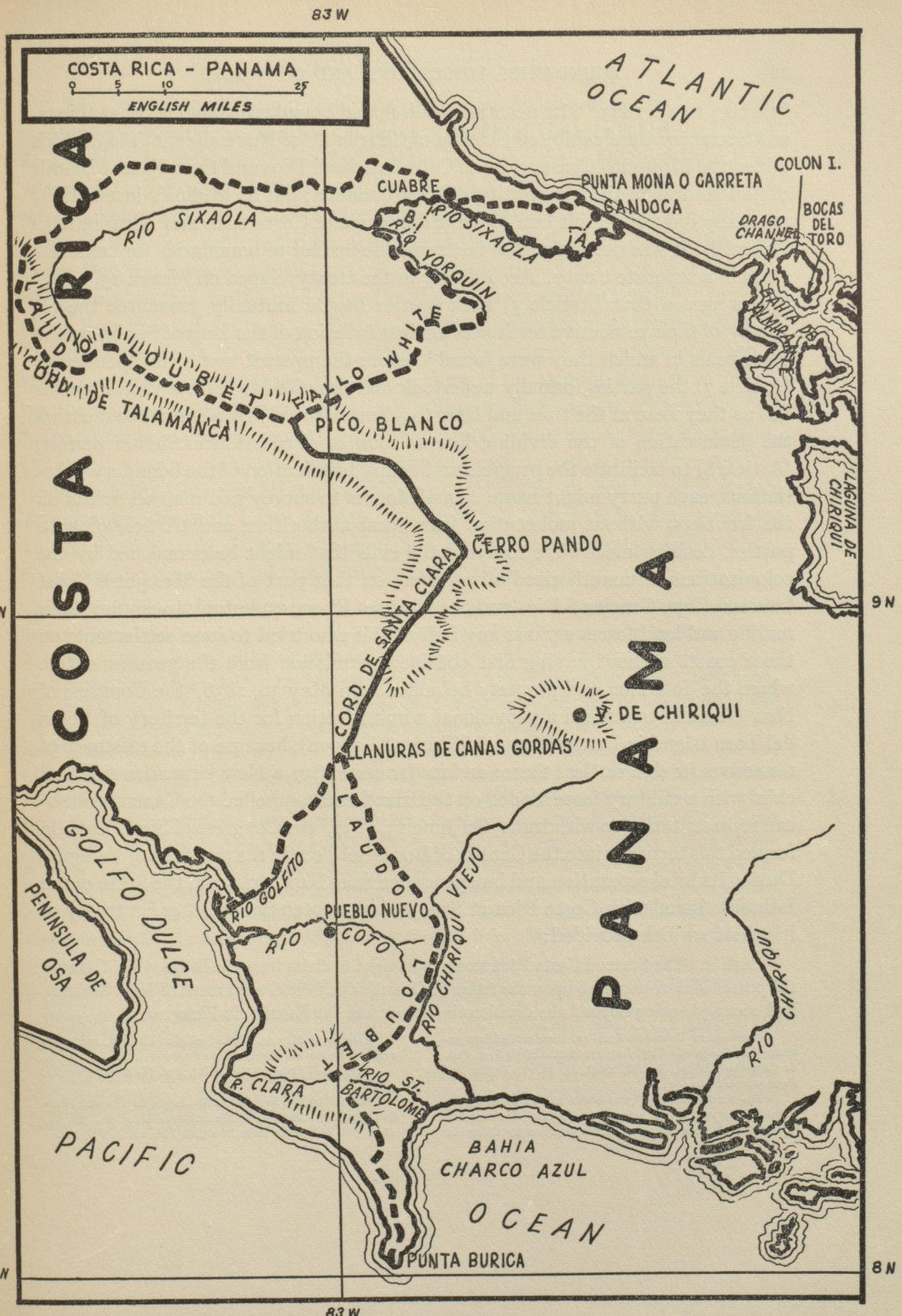
2. Costa Rica–Panama

A. Costa Rica–Colombia

In 1824 the United Provinces of Central America sent Pedro Molina to Bogotá for the purpose of negotiating a treaty of friendship with Colombia, and he had interviews to that end with Pedro Gual, minister of foreign affairs, from

[86] *U. S. For. Rel.*, 1923, I, 834–836. *Amer. J. Int. Law*, XVII (1923), 309.

[87] Fiscal Code, Art. 510 Subd. 5, as amended by Law 11 of Oct. 22, 1926. *Col. de Leyes de 1926* (San José 1928), II, 236 at 238.


COSTA RICA - PANAMA
0 5 10 25
ENGLISH MILES
83 W
ATLANTIC OCEAN
COSTA RICA
PANAMA
PACIFIC OCEAN
CUABRE
RIO SIXAOLA
B. RIO SIXAOLA
RIO YORQUIN
PUNTA MONA O GARRETA
CANDOCA
COLON I.
DRAGO CHANNEL
BOCAS DEL TORO
PUNTA ALMIRANTE
LAUDO LOUBET WHITE
CORD. DE TALAMANCA
PICO BLANCO
LAGUNA DE CHIRIQUI
CERRO PANDO
9 N
CORD. DE SANTA CLARA
V. DE CHIRIQUI
LLANURAS DE CANAS GORDAS
LAUDO
GOLFO DULCE
PENINSULA DE OSA
RIO GOLFITO
PUEBLO NUEVO
RIO COTO
RIO CHIRIQUI VIEJO
RIO CHIRIQUI
LAUDO
R. CLARA
RIO ST. BARTOLOME
BAHIA CHARCO AZUL
PUNTA BURICA
8 N
83 W

March 4 to 15, 1825. The negotiators discussed boundaries, among other things, and Secretary Gual exhibited a cédula of Charles IV of November 30, 1803, which added the Mosquito Coast as far as Cape Gracias á Dios and the adjacent islands of San Andrés to the viceroyalty of New Granada; but as Molina's instructions naturally did not permit him to yield the whole of Costa Rica and Nicaragua to Colombia, it was determined to postpone the matter of boundaries for consideration in a separate treaty. Accordingly in the treaty, signed on March 15, 1825,[1] it was agreed that (Article 5) both parties should mutually guarantee the integrity of their respective territories against invasion of the king of Spain, on the same basis in which they were found [2] before the present war of independence; (Article 7) the parties formally undertook and promised to respect their boundaries as they were at the time and later to adjust amicably by a special convention the demarcation of the dividing line as soon as circumstances should permit; (Article 8) to facilitate the progress and happy termination of the boundary negotiations, each party might name commissioners to survey and map all points on the frontiers, without molestation from local authorities; and (Article 9) both parties, desiring meanwhile to avoid the evils that might be occasioned by the colonizations of unauthorized adventurers on that part of the Mosquitos Coast between Cape Gracias á Dios and the Chagres River, undertook to employ their marine and land forces against any individuals who tried to form settlements on those coasts without having first obtained permission from the government to whom the dominion and property belonged. On May 30, 1836,[3] the Congress of New Granada organized a provisional administration for the territory of Bocas del Toro Island in Drago Channel (Chiriquí Lagoon), because of the existence of numerous foreign settlers there; and in January 1837 a New Granadan political chief with a military force landed on the island and compelled the Central American representative to withdraw. On June 13, 1837,[4] the Congress of New Granada formed this territory into the Canton of Bocas del Toro in the province of Veragua. During its brief separation and independence from New Granada, the State of the Isthmus signed with Costa Rica at San José on September 22, 1841,[5] a treaty of friendship which provided:

> Art. 4. The State of Costa Rica reserves its right to claim from the State of the Isthmus the possessions of Bocatoro upon the Atlantic Ocean, which the Government of New Granada had occupied, going beyond the division line located at the Escudo de Veraguas.

[1] Approved by Colombia, April 12, 1825; ratifications exchanged at Guatemala City, June 17, 1826. *Col. de Trat. Pub. de Colombia* (Cadena, Bogotá, 1884), II, 11. 12 *British and Foreign State Papers* 802.

[2] The word "naturally" was added at this point by the Commissioner of Central America at the time of exchanging ratifications; but the change was never acted on by Colombia.

[3] Decree of May 30, 1836. *Cod. Nac.* (Bogotá, 1925), VI, 144. 38 *British and Foreign State Papers* 644, 660.

[4] Decree of June 13, 1837. *Cod. Nac.* (Bogotá, 1925), VI, 415.

[5] Signed by Lic. Braulio Carrillo for Costa Rica and Pedro de Obarrio for the State of the Isthmus. Decr. 40, Feb. (?), 1842. *Col. de Leyes de Costa Rica* (San José, 1861), VII, 234.

With the reannexation of the State of the Isthmus in 1842, this treaty was treated by New Granada as null. On January 2, 1850, Colombia asked the United States for a determination of the limits of the Isthmus, on the north and south, to which protection under Article 35 of the Bogotá Treaty of December 12, 1846,[6] might extend; but the United States replied on January 29 that it thought the limits were defined with sufficient precision in that article itself, that it was not aware that the boundary with Costa Rica was unsettled,[7] but that, if it were, it would be advisable for the two states to adjust it as speedily as possible. In 1852 Costa Rica granted rights in the Bocas del Toro district and port on the Chiriquí Lagoon to the Costa Rica Company, whose advertisements in London drew out a warm correspondence between the consuls there of the two republics.[8] In 1852 [9] representatives of the two countries in Washington had various conferences but failed to come to any agreement, and other negotiators met in New York from October 3 to 25, 1855, producing various suggestions but no definite results. General Pedro Alcántara Herrán as minister of Colombia on April 2, 1856, began with Joaquín Bernardo Calvo, foreign minister in San José, a series of conferences, and on June 11, 1856,[10] they signed at San José a general treaty of friendship, commerce, navigation, and boundaries which included:

Art. 41. The Republics of New Granada and Costa Rica recognize as common boundaries between their respective territories a dividing line which, beginning on the coast of the Pacific [at Burica Point] at 83°13′ W longitude from Greenwich, runs in a straight line to the head of the Agua Clara river in the highest part where its waters have their origin; thence continuing by another straight line northeast one quarter north to the peak of Las Cruces ridge which is to be found in that direction; thence continuing along the crest of said ridge to the head of the Doraces [11] river; and thence down stream, through the middle of the principal bed of that river to its point of emptying into the Atlantic. Costa Rica renounces in favor of New Granada any right it may have to any territory east of said dividing line, and New Granada renounces in favor of Costa Rica any right it may have to any territory west of said line, not including in this release the islands of Providencia, Santa Catalina, San Andrés, Albuquerque, Mangle Grande, Mangle Chico and the others which belong to the District known as the Canton of San Andrés, which shall continue to belong to New Granada. The ports of Dulce Gulf [12] on the Pacific shall always remain free for the importation of merchandise destined for New Granada and for the exportation of goods proceeding from that Republic; and the ports of

[6] See Sec. 15, this chap., *infra*.

[7] *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), V, 653, 365.

[8] New Granada and Costa Rica; Boundary Question (London, 1853). Felipe Molina, *Costa Rica y Nueva Granada, Examen de la Cuestión de Límites* (Washington, 1852; in English, Washington, 1853).

[9] Pedro Fernández Madrid, Report, 1852; and Opinion of Senate Committee on Foreign Relations, April 10, 1855.

[10] *Col. de Trats. Int. de Costa Rica* (San José, 1892), I, 127. Antonio José Uribe, *Colombia y Costa Rica, Las Cuestiones de Límites* (Bogotá, 1931), 143, 156. *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), V, 750. 49 *British and Foreign State Papers* 1174. 50 *ibid.* 1043.

[11] Río de los Doraces (Indians) or Dorados; early name for the imaginary Río de las Culebras; perhaps nearest the (old) Estrella River.

[12] Golfo Dulce or Golfo de Osa, on the Pacific between Burica Point and Cape Matapalo in Costa Rica; to be distinguished from Golfo Dulce de Honduras, now called the Gulf of Honduras.

Almirante Bay on the Atlantic shall always remain free for the importation of merchandise destined for Costa Rica and for the exportation of goods proceeding from that Republic [with entire freedom of transit across the frontier in either direction for all such goods, respectively].

By this arrangement Colombia would lose and Costa Rica would gain not only the perhaps doubtful territory around Dulce Gulf, where Colombia had granted certain concessions, but land on the Mosquito Coast as far north as the mouth of the San Juan River, claimed to have been recognized as Colombia's by Great Britain, the only country which ever disputed it with her. The Colombian Congress approved the treaty only with the explanations that the Doraces River should be understood to be the first stream a short distance southeast of Careta or Mono Point and that all concessions of land or other privileges around Dulce Gulf should be respected by Costa Rica, and on July 20, 1857, Mariano Ospina, president of New Granada, ratified the treaty with these modifications; but the Costa Rican Congress, following the objections of its government, on November 3, 1857, refused to accept the explanations.

Costa Rica on March 10, 1859, ordered the settlements of Matina, and on the coast between El Tortuguero and Bocas del Toro added to the jurisdiction of the Port of Moín, and on July 9, 1860, authorized the construction of a railroad between Bocas del Toro and Dulce Gulf under a contract with Ambrose W. Thompson, a United States citizen.[13]

The boundary question rested another eight years until José María Castro for Costa Rica, after conferences in Bogotá on March 6, 1865, with Teodoro Valenzuela for Colombia, signed there on March 30, 1865,[14] a treaty which provided:

Art. 2. The two Republics fix as common boundaries between their respective territories a line which beginning on the coast of the Pacific Ocean at Burica Point, at 83°13′ W longitude from Greenwich, runs along the hills of said Point to Limoncito Hill; thence in a straight line to the sources of the Chiriquí Viejo river, in the highest part where its waters have their origin; thence eastward along the crest of the ridge which separates the waters of the two seas, crossing the tops of Picacho, Horqueta, Playita and Hornito Hills to Santiago Hill; thence in a straight line north to the origin of the Cañaveral river; thence by the principal bed of that river to the point of its emptying into the Atlantic Ocean; with renunciation by Colombia to Costa Rica of all its rights to territory west of the said line as far as the San Juan del Norte river, which empties into the Atlantic Ocean; not including in this renunciation Escudo de Veraguas island and Providencia, Santa Catalina, San Andrés, Alburquerque, Mangle Grande, Mangle Chico and other islands belonging to the former Province of Cartagena, as the Canton of San Andrés, which shall continue to belong to Colombia.

[13] Report of Lieutenant William N. Jeffers to Captain Frederick Engle, United States Navy, commanding Chiriquí Expedition, Jan. 22, 1861. H. Exec. Doc. 41, VI, Ser. 1097, 36th Cong., 2d Sess.

[14] *Col. de Trats. Int. de Costa Rica* (San José, 1892), I, 213. 58 *British and Foreign State Papers* 234.

The Colombian executive power and Senate and, on its first reading, the House of Representatives approved this treaty, but the session of 1865 ended without final action, and the Congress of 1866 rejected the treaty for reasons unrelated to the boundary question. There were civil jurisdictional conflicts at Dulce Gulf and the Sixola River in 1870 and 1871, and attempts at settlement of the boundary question by Antonio María Pradilla, Colombian minister, made no progress. General Buenaventura Correoso went as minister for Colombia to Central America in 1873, and he signed with Lorenzo Montúfar, foreign minister of Costa Rica, at San José on April 18, 1873,[15] a boundary treaty which provided as follows:

> Art. 2. The two Republics fix as common boundaries between their respective territories, a line which, starting from the coast of the Pacific Ocean at Burica Point, at 8°40½′ W longitude from Bogotá, 8°18′ N latitude, runs straight along the tops of the hills of said Point until it reaches the head of the St. Bartolomé river, at 8°43½′ W longitude from Bogotá, 8½° N latitude; thence also in a straight line across the ridge until it meets to the north the head of the Barrancos river, at 8°26½′ W longitude from Bogotá, 8°54½′ N latitude; and from this point, following the course of said river, to its point of emptying into Almirante Bay; . . .

It further provided that (Article 3) notwithstanding that Costa Rican territory did not encompass the whole of Almirante Bay, Costa Rican vessels should always have free use of all the waters of said bay; (Article 4) in order that these boundaries might be marked on the ground, the two republics were to name a mixed commission, within one year after either party requested it, to make the demarcation, with reference to the map of the Isthmus of Panamá made by Colonel Augustín Codazzi for the Grenadan government in 1854, which had been used in framing the present treaty; (Article 5) real property titles until now legally obtaining in the portion which Colombia released to Costa Rica were to be respected; (Article 6) the adjacent islands in Almirante Bay, as also dominion over that part of said bay which the present treaty did not recognize as Costa Rica's, were to belong to Colombia, preserving to Costa Rica the rights specified in Article 3, above. Manuel Murillo, as president of Colombia, approved this treaty on December 30, 1873, but, although it was less favorable to Costa Rica than the one of 1865, she still kept part of Almirante Bay, and, after consideration by three different committees, the Colombian Senate of 1874 adjourned without acting on it, and the Senate of 1876 disapproved it, criticizing General Correoso for having yielded too much. There were minor border incidents in 1879[16] and the usual reported invasions, inflaming tempers; but it seemed impossible to get

[15] Uribe (*op. cit. supra*, Note 10), p. 163. Francisco de P. Borda, *Límites entre Colombia i Costa Rica*, Pub'n Oficial (Bogotá, 1880).

[16] *U. S. For. Rel.*, 1880, pp. 310, 325.

any agreement by direct treaties, and the two countries turned to arbitration possibilities. In 1880 Carlos Holguín was sent by the Colombian government to San José to press claims concerning the occupation of territory on Dulce Gulf which Colombia declared clearly within her jurisdiction, and to try to obtain a final solution of the prolonged boundary discussion. He had conferences with Foreign Minister José María Castro and then with President General Tomás Guardia, and, as a result of his activities, José María Quijano Otero was sent from Bogotá especially to negotiate a boundary treaty. The Colombian wished to reach a direct agreement, according to the interests of both countries, declaring his country willing to make concessions of a considerable part of the territory which in strict right belonged to Colombia, but Secretary Castro preferred to submit the matter to an arbiter, to which Sr. Quijano Otero agreed, with the comment that Colombia would contest her full rights and make no friendly concession in an arbitration.[17] They accordingly signed at San José on December 25, 1880,[18] an arbitration convention which recited that the boundary question had been the subject of the convention of March 15, 1825, and of various treaties since, none of which had been ratified, and provided (Article 1) for the submission to arbitration of the question of the boundaries between Colombia and Costa Rica, (Article 2) with a decision in ten months, (Article 4) to have all the force of an obligatory and irrevocable treaty between the parties, without appeal of any sort, (Article 5) by (successively) the king of the Belgians, the king of Spain, or the president of Argentina. This convention having been approved by both governments and Congresses,[19] the United States objected on June 25, 1881, in notes to Colombia, Costa Rica, Belgium, and Spain,[20] that the United States by its treaty of December 12, 1846,[21] with New Granada had acquired certain rights and privileges concerning transit across the Isthmus of Panama, and objected to an arbitral award by any government unless Colombia as well as Costa Rica should declare that such rights remained intact despite any decision, and that any territory which might be affected by the award should be transferred subject to such rights as the United States might have. For this or other reasons, the king

[17] In the subsequent arbitration before President Loubet, Colombia in fact claimed to the (Francisco) Silvela line, starting on the Pacific at the mouth of the Golfito River in Dulce Gulf and running thence northward along a meridian (83°11′30″ W longitude from Greenwich) which, crossing the Coto River and the Lari and Coén rivers, meets the Tiliri or Sigsaula River at 9°33′ N latitude, 85°31′30″ W longitude from Paris (83°11′16″ W from Greenwich), and thence by a straight line to the mouth of the Sarapiquí River in the San Juan or Desaguadero River at 10°43′ N latitude, 86°15′ W longitude from Paris (83°54′46″ W from Greenwich).

[18] Ratified by Colombia (Ley 26), April 30, 1881; ratified by Costa Rica, Dec. 30, 1880; ratifications exchanged at Panama, Dec. 9, 1881. *Col. de Trats. Int. de Costa Rica* (San José, 1892) I, 355; (San José, 1893), II, 291. *U. S. For. Rel.*, 1881, p. 354. 71 *British and Foreign State Papers* 215.

[19] Manuel M. de Peralta, *Costa Rica, Nicaragua y Panama* (Madrid, Paris, 1883). Manuel M. de Peralta, *Costa Rica y Colombia de 1573 a 1881* (Madrid, 1886).

[20] S. Ex. Doc. 194, VI Ser. 1991, 47th Cong., 1st Sess. *U. S. For. Rel.*, 1881, pp. 70, 74, 99–101, 105, 111–113, 1057, 1062, 1067.

[21] See Sec. 15, this chap., *infra*.

of the Belgians declined to act as arbitrator, but King Alfonso XII of Spain accepted, declaring, however, that he would not take up the question until he had made his decision in the matter of the boundary between Colombia and Venezuela then pending before him.[22] The king died on November 24, 1885, but Colombia and Costa Rica signed an additional convention at Paris on January 20, 1886,[23] agreeing that (Article 1) the government of Spain was competent to go on with the arbitration, and,

> Art. 2. The territorial area which the Republic of Costa Rica claims on the Atlantic reaches to the island of Escudo de Veragua and the Chiriquí [Calobebora] river, inclusive, and on the Pacific, to the Chiriquí Viejo river, inclusive, east of Burica Point.
>
> The territorial area which the United States of Colombia claim reaches, on the Atlantic, to Cape Gracias á Dios, and on the Pacific to the point of emptying of the Golfito river into Dulce Gulf.
>
> Art. 3. The arbitral decision shall be confined to the disputed territory, within the extreme bounds above described, and cannot affect in any manner any rights which a third party who has not intervened in the arbitration may claim to have in the territory included within the aforesaid bounds; . . .

It was further agreed (Article 4) that if the arbitrator could not give his decision within the ten months originally stipulated, the time should be extended thence another ten months.

The Spanish government made no decision even within the extended time; and Colombia thereupon considered that both conventions, of 1880 and 1886, had lapsed, and offered to Costa Rica to renew them but would not go on with the arbitration until some new agreement [24] had revived or extended the others. Costa Rica sent to Bogotá Lic. José Ascensión Esquivel, and after some discussion he and Foreign Minister General Jorge Holguín signed at Bogotá on November 4, 1896,[25] an arbitration convention which (Article 1) revalidated the arbitration conventions of December 25, 1880, and January 20, 1886, but (Article 2) named for arbitrator, successively, the president of the French Republic, the president of Mexico, or the president of Switzerland, (Article 4) to give a final and binding decision in one year from the completion of the cases. President Émile Loubet of France, being requested on June 9, 1897, accepted on June 16, 1897, the office of

[22] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), p. 209.

[23] *Col. de Trats. Int. de Costa Rica* (San José, 1892), I, 371. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXII (1905), 383. 92 *British and Foreign State Papers* 1034. *U. S. For. Rel.*, 1894, pp. 439–441.

[24] Manuel M. de Peralta, *Límites de Costa Rica y Colombia* (Madrid, 1890). Manuel M. de Peralta, *Historia de la Jurisdicción Territorial de Costa Rica* (Madrid, 1891). Francisco de P. Borda, *Dos Libros sobre Límites* (Bogotá, 1894). Francisco de P. Borda, *Límites de Colombia con Costa Rica* (Bogotá, 1896). *U. S. For. Rel.*, 1893, pp. 202, 213, 216, 266–294; 1894, pp. 180–195, 439–441.

[25] Ratified by Colombia, Nov. 6, 1896 (Ley 71); ratified by Costa Rica, March 3, 1897; ratifications exchanged at Washington, May 3, 1897. *Col. de Leyes y Decr.*, 1897 (San José, 1898), 34. Uribe, *op. cit. supra*, Note 10, p. 596. *Arch. Dipl.*, 2e Sér., LXIV (1897), 17. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXV (1900), 62. 92 *British and Foreign State Papers* 1036.

arbiter and appointed an examining commission to go over the documents. The allegations and rebuttals of both sides [26] were presented on September 16, 1899, with written arguments, and on September 11, 1900,[27] President Loubet handed down his award, which adjudged that:

> The frontier between the Republics of Colombia and Costa Rica shall be formed by the crest of the ridge which starts from Cape Mona, on the Atlantic Ocean, and closes to the north the valley of the Tarire or Sixola river; thence by the chain which divides the waters between the Atlantic and the Pacific to approximately 9° latitude; thence following the line which separates the waters of Chiriquí Viejo and the affluents of Dulce Gulf to terminate at Burica Point, on the Pacific Ocean.
>
> As to the islands, groups of islands, islets and banks situated in the Atlantic Ocean near the coast, east and southeast of Mona Point, those islands, whatever their number and extension, shall form part of the Colombian jurisdiction, and those which are west and northwest of said Point shall belong to the Republic of Costa Rica.
>
> As to the islands more distant from the Continent and included between the Mosquito Coast and the Isthmus of Panamá, especially Mangle Chico, Mangle Grande, Alburquerque Cays, San Andrés, Santa Catalina, Providencia, Escudo de Veragua and any other islands, islets and banks which formerly belonged to the ancient Province of Cartagena, under the designation of the Canton of San Andrés, it is understood that the territory of such islands, without any exception, belongs to the United States of Colombia.
>
> In the Pacific Ocean, Colombia shall also possess, counting from and including the Burica Islands, all the islands situated east of the Point of that name; and those which lie to the west of that Point are awarded to Costa Rica.

This decision [28] gave Costa Rica a considerable amount of territory which had been claimed by Colombia: on the Atlantic, the coast from Cape Mona to the San Juan River, and on the Pacific, the coast from the mouth of the Golfito River in Dulce Gulf to Burica Point.

On September 29, 1900, Manuel María de Peralta, minister of Costa Rica in Paris, sent M. Theophile Delcassé, French foreign minister, a note stating that his government interpreted the first paragraph of the arbitral decision to mean that

> the frontier between the Republics of Colombia and Costa Rica shall be formed by the crest of the ridge which starts from Cape Mona, on the Atlantic Ocean, and closes to the north the valley of the Tarire or Sixola river near the mouth of that river; thence southwestward on the left bank of that river to the confluence of the Yurquín or Zhorquín [also called Sixola, Culebras

[26] Francisco Silvela de la Vielleuze, *Exposé* (Madrid, 1898). *Resumé Chronologique des Titres Territoriaux de Colombie* (Paris, 1899). Raymond Poincaré, *Cuestión de Límites entre Colombia y Costa Rica* (Sevilla, 1899). *Deuxième Mémoire de Colombie* (Paris, 1899). A. Maura, *Consultation* (Madrid, 1900). *Troisième Mémoire de Colombie* (Paris, 1900). Manuel M. de Peralta, *Exposé des Droits Territoriaux de Costa Rica* (Paris, 1898). Manuel M. de Peralta, *Costa Rica y Costa de Mosquitos, Documentos para la Historia de la Jurisdicción Territorial de Costa Rica y Colombia* (Paris, 1898). Manuel M. de Peralta, *Réplica a l'Alegato de Colombia* (Paris, 1899; in French, Paris, 1899). Manuel M. de Peralta, *Éclaircissements* (Paris, 1900).

[27] Luis Anderson, *El Laudo Loubet* (San José, 1911). 92 *British and Foreign State Papers* 1038. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér. XXXII (1905), 411. *Arch. Dipl.* 3e Sér. CX (1909), 281. Clunet, *J. dr. int. privé*, XXVIII (1901), 858. *Rev. de dr. int. et de lég. comp.*, IV (1902), 561.

[28] As to the islands in the Atlantic, see Sec. 11, this chap., *infra*.

or Doraces] river to meridian 82° from Greenwich, 85°10′ from Paris and 9.33° N latitude. Here the frontier line will cut the thalweg of the Tarire on the left bank of the Yurquín, and follow southward the chain of division of waters between the basins of the Yurquín on the east and the Urén on the west, thence by the chain of division of the waters between the Atlantic and the Pacific to near 9° latitude; thence following the line of division of the waters between the Chiriquí Viejo and the affluents of Dulce Gulf to terminate at Burica Point;

since, unless the line followed the Yurquín and not the Tarire River, it would include, within the area awarded to Colombia, territory not in dispute. M. Delcassé answered on November 23, 1900, that, in the absence of geographical data, the arbiter had not been able to fix the frontier other than by general indications, but that in accordance with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, the frontier line must be traced within the bounds of the territory in dispute, and it was for Colombia and Costa Rica to proceed to the physical determination of their frontiers. Costa Rican Foreign Minister Ricardo Pacheco wrote the Colombian foreign minister on July 27, 1901, that

any interpretation different from that which Costa Rica had given [in the 1900 note of Peralta to Delcassé] and which, impairing her undisputed rights, should exceed Colombia's demands in the litigation, would undermine the force of the Award.

On September 2, 1903, Leónidas Pacheco, minister from Costa Rica to Colombia, asked that government if it would trace the dividing line in accordance with the interpretation indicated in Sr. Peralta's note; but while the Colombian government was preparing to answer, Panama broke away from Colombia, on November 3, 1903, and by becoming independent took over the question of the boundary of her territory with Costa Rica.

B. Costa Rica–Panama

The government of Panama [29] from the outset disclaimed any interest or right to the Mosquito Coast up to Cape Gracias á Dios and the adjacent Islands of San Andrés, which by the cédula of November 30, 1803, first relied on by Secretary Gual for Colombia in 1825, had been added to the viceroyalty of New Granada as part of the province of Cartagena. Panama was perfectly willing that the struggle over this region should rest between Colombia and Nicaragua,[30] and although the first Panama constitution of February 13, 1904,[31] recited that,

Art. 3. The territory of the Republic is composed of . . . the continental and insular territory awarded to the Republic of Colombia by virtue of the decision delivered by the President of the French Republic on Sept. 11, 1900,

[29] See Sec. 14, this chap., *infra*.
[30] See Sec. 11, this chap., *infra*.
[31] Constitution (Panama, 1904; in English, Panama, 1904). *U. S. For. Rel.*, 1904, p. 562.

it had been generally accepted officially as meaning only the continental area bordering Costa Rica.

Costa Rica and the new Republic of Panama desired, at first at least, to be friendly, and after short negotiations concluded at Panama City on March 6, 1905,[32] a boundary treaty which provided as follows:

Art. 1. The frontier between the Republics of Panama and Costa Rica shall be formed by a line that, starting from Punta Mona on the Atlantic Ocean, proceeds in a Southwest direction until it meets the Sixaola river, upstream from Cuabre. From this point the dividing line will proceed by the left bank of said Sixaola river to the intersection of this line with the Yurquín or Zhorquín river. Here the frontier line will cut the thalweg of the Tarire or Sixaola on the left bank of the Yurquín and will follow in a southerly direction the watershed, first between the basins of the Yurquín on the East and of the Urén on the West, and thence between those of the latter and those of the Tararia or Tilorio until arriving at the summit of the great cordillera that divides the waters of the Atlantic Ocean from those of the Pacific Ocean. From this place the line will proceed in an East-south-east direction along the summit mentioned to a point called Cerro Pando, which marks the beginning of the watershed between the rivers Coto de Térraba and Chiriquí Viejo. From here the frontier will continue along the summit of the mountains of Santa Clara, following the watershed between the rivers Coto de Térraba and Esquinas to the West, and the rivers Chiriquí Viejo and Coto del Golfo to the East, until the headwaters of the river Golfito are reached, along which the line will continue until it empties into the Dulce Gulf, at the mouth called Golfito. Between this last point and Puntarenitas a straight imaginary line will divide the waters of Dulce Gulf, the western portion of it remaining under the exclusive dominion of Costa Rica and the eastern part under the common dominion of both signatory Republics, excepting that which on their respective coasts is called litoral sea and which shall be considered an integral part of the contiguous territory.

At the same time, the same representatives signed a declaration that:

the Signatory Republics solemnly declare that by the tenor of what is provided and established in the respective laws and treaties and the declarations made by the parties, the dispute regarding territorial limits, maintained for many years by the Republic of Colombia, the former owner of the territory in controversy, now belonging to that of Panama and that of Costa Rica, was settled by the judgment that His Excellency, the President of the French Republic was pleased to pronounce in the respective arbitral proceeding, at Rambouillet on September 11, 1900, and in virtue of which, the frontier being fixed by the High Judge by means of general indications, the material determination of the same is left subject to the mutual accord prompted by the spirit of conciliation and good understanding by which up to now the two interested Nations have been animated,

and a convention for setting landmarks, by a commission to be appointed by each government with an umpire engineer to be appointed by the president of the United States, to begin at Mona Point on the Atlantic and be finished in twelve

[32] Signed by Lic. Leónidas Pacheco for Costa Rica and Foreign Minister General Santiago de la Guardia for Panama.

months. The president of Costa Rica approved the three agreements upon condition that Panama ratify them; but the National Assembly of Panama on January 26, 1907, approved them with three classifications:

1. The islands, islets, groups of islands and banks in dispute situated in the Atlantic, to the East of the meridian that passes by Punta Mona, shall belong to Panama, and those that are to the West shall belong to Costa Rica. The islands, islets, groups of islands and banks situated in the Pacific, to the South of the imaginary line that goes from the mouth of the river Golfito, in the bay of that name, to Puntarenitas, shall belong to the Nation to whose coasts they are nearest.

2. The lines referring to cardinal points shall be excluded and in preference shall be followed those of the division of the waters; thus, the line that leaves Punta Mona in the Atlantic Ocean shall follow the division of the waters that flow to the coasts of the one country or the other to the point nearest to Cuabre and from there to meet the river Sixaola, up stream from the site of Cuabre; and

3. The River Golfito, to which the Treaty refers, is that which conforms to the maps of Ponce de León, of Friederichsen, of Montes de Oca, of Peralta, and that which was used during the discussion of the Treaty, emptying to the Northwest in the bay of Golfito, in the Dulce Gulf, close to the entrance of said bay, and the imaginary line between the mouth of said River Golfito and Puntarenitas shall pass to the Northeast of the entrance of said bay.

In May 1907 President Cleto González Víquez asked the Costa Rican Congress not to accept the three agreements. In November 1908 President González sent Lic. Luis Anderson as special minister to Washington to ask the mediation and good offices of the United States to procure a satisfactory situation as to the boundary question with Panama, but still opposing the Loubet award, for the vice of *ultra petita*. On June 3, 1909, Panama asked information as to the fate of the treaty, and Foreign Minister R. Fernández Guardia of Costa Rica answered on June 15, 1909, asserting the desire of his government that the old and troublesome territorial dispute be settled in a friendly manner and reciting at length the history of the matter since the Loubet award, explained that the classifications, whether slight or substantial, were necessarily an indirect form of disapproval and the government of Costa Rica had since 1907 considered the treaty invalid,[33] but added that his government was ready to negotiate with Panama either for a new treaty or for an arbitral convention to decide the correct interpretation and the force of the Loubet award.

Meantime, following difficulties in 1905, property of the American Banana Company in the Sixaola Valley and Puerto Gandoca had been attached by order of a Costa Rican court, and on complaint of H. L. McConnell, president of the company, who entered the region in 1903, the United States on January 29, 1906,

[33] The Costa Rican Congress in secret session on Oct. 24, 1911, decided formally to allow the declaration, treaty, and convention to lapse.

asked Costa Rica and Panama to come to an agreement as to the *status quo* in the territory in question, and to expect claims for any undue administrative action meantime. Costa Rica replied that the territory in question was hers, but in 1907 and 1908 asked the good offices and mediation of the United States, which replied it would gladly help. On February 16, 1909, Robert Bacon, United States secretary of state, wrote Costa Rica [34] that the United States could not await permanent settlement of the boundary question to recognize and safeguard the just rights of its citizens, and meantime would treat the *de facto* line as the boundary north of which Costa Rica has actual jurisdiction and control. This led to renewed liveliness in the exchange of notes between Costa Rica and Panama through 1909 without any apparent progress toward a direct settlement. As always, Costa Rica insisted that the Loubet line was void as lying in part outside the bounds of the disputed territory and that the mountain range referred to had no existence, so that the whole line should be considered anew; and Panama declared that the only issue should be the legality of the Loubet line within the scope of the authority of the 1896 arbitration convention. On February 1 and 2, 1910,[35] United States Secretary of State Philander C. Knox telegraphed both countries that there was no intention to limit the boundary issue to the mere interpretation of the Loubet award, but that the United States government thought that the real issue to be submitted to arbitration was the true boundary line, between the accepted terminal points of Mona Point and Burica Point, and asked both governments to give their special envoys in Washington full power to negotiate a protocol of arbitration on this basis. Lic. Luis Anderson of Costa Rica and Dr. Belisario Porras of Panama conferred, in the presence of three officials of the United States Department of State, in Washington on February 14, 1910, and on March 1, 1910, held a further conference with Secretary Knox, who suggested [36] that the *compromis* stipulate the acceptance of the line from the Pacific Ocean to a point beyond Cerro Pando on the Central Cordillera, and state the question to be arbitrated as,

> What is the boundary between the Republics of Costa Rica and Panama under and most in accordance with the true interpretation and correct intention of the Loubet award in the light of all the historical, geographical, topographical and other facts and circumstances surrounding it as well as under the established principles of international law. . .

with a provision that all valid land or property rights in the disputed territory granted by either republic or by Colombia before or after the Loubet award

[34] *U. S. For. Rel.*, 1910, pp. 772–822.
[35] *U. S. For. Rel.*, 1910, p. 804.
[36] *U. S. For. Rel.*, 1910, p. 810

should be recognized and protected. On this basis the ministers signed at Washington on March 17, 1910,[37] an arbitration convention, which provided:

Art. 1. The Republic of Costa Rica and the Republic of Panama, although they consider that the boundary between their respective territories designated by the Arbitral Award of His Excellency the President of the Republic of France the 11th of September, 1900, is clear and indisputable in the region of the Pacific from Punta Burica to a point beyond Cerro Pando on the Central Cordillera near the ninth degree of North latitude, have not been able to reach an agreement in respect to the interpretation which ought to be given to the Arbitral Award as to the rest of the boundary line; and for the purpose of settling their said disagreements agree to submit to the decision of the Honorable the Chief Justice of the United States, who will determine, in the capacity of Arbitrator, the question: What is the boundary between Costa Rica and Panama under and most in accordance with the correct interpretation and true intention of the Award of the President of the Republic of France made the 11th of September, 1900; . . .

It also provided (Article 2) that a survey should be made by four engineers, if desired by the arbitrator; that (Article 3) property rights in any transferred territory were to be recognized and protected; that (Article 5) a decision was to be reached within three months; (Article 7) the award was to be held as a perfect and compulsory treaty between the parties, final, conclusive and without appeal; and that a commission of delimitation of four engineers, one named by the president of each country and two by the chief justice of the United States, should immediately proceed to mark the boundary line permanently. President Ricardo Jiménez Oreamuno of Costa Rica sought in 1910 to obtain a modification of the restrictive terms of the arbitration in favor of a more ample formula, but Panama insisted on the text of the convention as signed.

Chief Justice Edward Douglass White accepted the office of arbitrator.[38] The cases and arguments[39] were all submitted to him by November 18, 1913, and he rendered his decision on September 12, 1914,[40] adjudging: (1) that the line of boundary established by the Loubet award from Mona Point to the main range of the Cordilleras was non-existing, (2) that the boundary line "most in

[37] Ratified by Costa Rica (Decr. Leg. 2), Aug. 23, 1910; ratified by Panama (Ley 1), Sept. 28, 1910; ratifications exchanged at Washington, May 17, 1911. *Amer. J. Int. Law*, VI (1912), Supp. 1. 103 *British and Foreign State Papers* 404. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., V (1912), 678. *Rev. Gén. Dr. Int. Pub.*, XVII (1910), 407.

[38] *U. S. For. Rel.*, 1911, pp. 674–677.

[39] Belisario Porras, *Límites entre Panama y Costa Rica, Primera Exposición* (Washington, 1911). *Argument of Costa Rica* (Washington, 1913). *Documents annexed to the Argument of Costa Rica* (Rosslyn, Va., 1913), 4 vols. *Diagrams annexed to the Argument of Costa Rica* (Washington, 1913). Luis Matamoros, *Report of the Consulting Engineer of Costa Rica* (Washington, 1913). *Segismundo Moret y Prendergast and Vicente Santamaría de Paredes, Opinion Concerning the Question of Boundaries, given at the Request of Costa Rica* (Washington, 1913). John Bassett Moore, *Memorandum on Uti Possidetis* (Rosslyn, Va., 1913). *Answer of Costa Rica to the Argument of Panama* (Washington, 1914). Maps annexed to the Answer of Costa Rica (Washington, 1914). Chandler P. Anderson, *Synopsis of Case and Argument for Costa Rica in Reply* (Washington, 1914). *Statement on behalf of Panama; Answer on behalf of Panama; Additional Documents submitted on behalf of Panama* (Washington, 1913–14?). Belisario Porras, *Argument upon the Jurisdiction and Power of the Arbitrator* (Washington, 1914?).

[40] Edward Douglass White, *Fallo Arbitral* (Spanish and English, San José, 1914; English, Washington, 1914). *Controversia de Límites entre Panama y Costa Rica* (Panama, 1914). *Amer. J. Int. Law*, VIII (1914), 913. 108 *British and Foreign State Papers* 439.

accordance with the correct interpretation and true intention" of the Loubet award was a line which,

> starting at the mouth of the Sixaola river in the Atlantic, follows the thalweg of that river, upstream, until it reaches the Yorquín, or Zhorquín river; thence along the thalweg of the Yorquín river to that one of its headwaters which is nearest to the divide which is the north limit of the drainage area of the Changuinola, or Tilorio river; thence up the thalweg which contains said headwater to said divide; thence along said divide to the divide which separates waters running to the Atlantic from those running to the Pacific; thence along said Atlantic–Pacific divide to the point near the ninth degree of north latitude "beyond Cerro Pando," referred to in Article 1 of the Treaty of March 17th, 1910;

and, (3) that the decree was subject to the reservations that nothing in it (*a*) should be considered as reopening the previous decree rejecting the claim of Panama to a territorial boundary up to Cape Gracias á Dios or the claim of Costa Rica to the boundary of the Chiriquí River, (*b*) affect the previous decree awarding the islands off the coast, and (*c*) be construed by its silence as affecting the right of either party to act under Article 7 of the treaty to delimit the boundary fixed. The decision was received in Costa Rica with general satisfaction; but on October 17, 1914,[41] Ernesto T. Lefevre, foreign minister of Panama, wrote Manuel Castro Quesada, foreign minister of Costa Rica, that Panama thought that arbitrator White had exceeded the terms of the arbitration and had

> made a real revision of the Loubet award instead of the interpretation called for by the Arbitral Convention, and had fixed a frontier line totally strange to the former award,

for which reason the White award was null under international law, and Panama did not consider herself obliged to comply with it. Notes of similar purport were sent on the same day to Justice White and to the United States secretary of state. Secretary Castro Quesada answered on October 30, 1914, in a long communication arguing that the White award was within the terms of the arbitration and should not be considered null. The Congress of Panama on October 21, 1914, declared the award inacceptable. The United States ministers in San José and Panama City wrote the two foreign ministers on November 30, 1914, that the United States government had heard that there was danger of a collision between Costa Rica and Panama over the boundary dispute recently arbitrated, and, strongly hoping there might be no provocation of hostilities but a friendly settlement of the differences, proffered its good offices for mediation. Secretary Castro Quesada answered on December 12, 1914, that Costa Rica considered the long boundary

[41] *Documentos relativos al conflicto de jurisdicción territorial con la Repùblica de Panamá* (San José, 1921). *Respuesta de Panamá a los Estados Unidos* (Panama, 1921; in English, Panama, 1921). President Belisario Porras, *Manifiesto a la Nación* (Panama, 1921). Antonio S. Bustamante, *Dictamen* (Panama, 1921; in English, Panama, 1921). Ricardo J. Alfaro, *En Defensa de los que quieren paz y amistad* (Panama, 1927). *U. S. For. Rel.*, 1914, pp. 993–1028; 1915, pp. 1131–1155.

question finally settled by the White award, but regretted that Panama did not accept it and had placed administrative authorities in various places north of Burica Point; and on January 14, 1915, he complained of such acts to Secretary Lefevre of Panama. The latter replied on January 30, 1915, that as Costa Rica did not accept the Loubet award, so Panama rejected the White award,[42] and the matter must revert to the line of the *status quo*.

After further exchange of acrimonious notes, with fruitless efforts by United States Secretary of State William J. Bryan to mediate, diplomatic relations between Costa Rica and Panama were broken off in 1917, and efforts at mediation by the United States Department of State in 1920 and 1921 also failed. On February 21, 1921, a detachment of Costa Rican soldiers entered the Pueblo Nuevo de Coto, a village of six farms on the Coto River about three and one-half miles east of Golfito. On February 27 they were attacked by General Quintero of Panama at the head of seven hundred volunteers and police, and captured, as were smaller detachments of Costa Ricans who landed on February 28 and March 2, 1921; and Panama also took two Costa Rican gasoline launches on the Coto River or Dulce Gulf, sending the prisoners later to Taboga Island.

President Warren G. Harding of the United States,[43] on representations especially by the United Fruit Company, urged on both countries the cessation of hostilities and the acceptance of mediation. Panama on March 2, 1921, complained of the attacks and requested the League of Nations to punish Costa Rica under the Covenant. The Council, then sitting in Paris, reminded both states on March 4 that they were members of the League and had publicly subscribed to the high principle and obligations of the Covenant, and requested information as to the facts. Foreign Minister Alejandro Alvarado Quirós of Costa Rica notified the League on March 6 that, thanks to the mediation of the United States, the dispute was virtually at an end, and Secretary-General Eric Drummond congratulated both foreign ministers on March 12, 1921, that the dispute was in process of settlement.[44] Panama on March 2 and 18 proposed to the United States a double plebiscite, one in the Pacific zone and the other in the Atlantic zone, with the mediation of the United States, to decide definitely and forever to which of the adjoining countries the sovereignty and jurisdiction of the disputed zones should belong. On March 4, with reference to the alleged efforts of Costa Rica to dispossess Panama of Coto and the invasion of territory east of the Sixaola River, Panama asked the United States for a statement of its understanding of its obligations to Panama under Article 1 of the Hay-Bunau Varilla

[42] *Amer. J. Int. Law*, XV (1921), 236.
[43] *U. S. For. Rel.*, 1921, I, 175–184.
[44] *League of Nations Official Journal*, 1921, 2nd Year, 214–219, 341–344; 1922, 3rd Year, 131.

Treaty,[45] inasmuch as such acts of unlawful war affected the territorial and political integrity of Panama. United States Secretary of State Charles Evans Hughes replied on March 15,[46] with a copy to Costa Rica on March 19, that the Hay-Bunau Varilla Treaty also implied an obligation on the part of Panama to comply faithfully with her international obligations, and that she evidently had not accepted the Loubet award line from Point Burica to a point in the Central Cordillera beyond Cerro Pando, near 9° N latitude, to the north of which line Coto was situated, nor the subsequent White award, to which she had solemnly agreed in advance to submit, for the rest of the line to the Atlantic, so that the United States did not recognize the application of the Hay-Bunau Varilla Treaty, but asked Panama to arrange at once with Costa Rica for the appointment of the commission of delimitation under Article 7 of the Porras-Anderson Treaty of March 17, 1910. President Belisario Porras of Panama appealed on March 18[47] to President Harding, who supported Secretary Hughes' position.

On June 26, 1921, Secretary Alvarado Quirós, declaring that Costa Rica had the moral and material support of Guatemala, Honduras, and Salvador, asked Argentina, Brazil, Chile, and Peru to support the position of Costa Rica and the United States in getting Panama to comply with the Loubet and White awards and the 1910 treaty. On August 1, 1921,[48] Costa Rica asked United States Chief Justice William Howard Taft to name two engineers to act on the delimitation commission under Article 7 of the 1910 treaty (which he did on August 20 by naming the same two United States professors of engineering who had acted on the commission in 1911) and asked Secretary Hughes to request Panama (1) to hand over the territory north of the Burica-Cerro Pando line occupied by her and (2) to designate an engineer for the delimitation commission, as the president of Costa Rica had already done. On August 3 Costa Rica notified the United States that it could not consent to submit the dispute to the League of Nations under Article XIII of the Treaty of Versailles, as suggested by Panama, since (1) the matter was under mediation by the United States and (2) the jurisdiction of the League was limited to future conflicts. On August 22 it was made known that the U.S.S. *Pennsylvania* was sailing for Panama with a battalion of marines to insure the orderly transfer of jurisdiction. On August 23 it was announced that Panama would recall at once her Corregidor and policemen from the Pueblo Nuevo de Coto,[49] and Costa Rica took possession peaceably on September 5,

[45] See Sec. 15B, this chap., *infra*.
[46] *U. S. For. Rel.*, 1921, I, 184–188.
[47] *U. S. For. Rel.*, 1921, I, 189.
[48] *U. S. For. Rel.*, 1921, I, 190–228.
[49] Dr. Ricardo J. Alfaro (*op. cit.*, *supra*, Note 41), p. 10, says: "coerced and threatened by the greatest power in the world, Panama, defenceless, had to retire from the territory she had bravely defended." *Cf. Amer. J. Int. Law*, XXV (1931), 329. *Survey of Int. Affairs*, 1925 (London, 1928), II, 430.

1921, reattaching the region to the Costa Rican canton of Osa. Costa Rica refused to deal further directly with Panama, diplomatic relations were broken off, and the Legations remained closed until the end of 1928, when the good offices of the republic of Chile finally brought about a resumption of relations. Conversations upon the border questions were attempted in 1928, without result.

In May 1936 Panama told Costa Rica [50] she wished to postpone definite action until after the ratification by the United States of the treaty with Panama of March 2, 1936.[51] An agreement between Lic. Luis Fernández Rodríguez, Costa Rican minister of government, and Narciso Garay, foreign minister of Panama, was announced on August 15, 1938, to have been reached on the basis of concessions by both countries: Costa Rica to give up 2,032 hectares (5,021.3 acres) north of the mouth of the Sixaola River on the Atlantic (Parcel A on map) in exchange for the cession by Panama of 2,368 hectares (5,851.6 acres) near the river Suribli (Parcel B on map), both nations to have free navigation on the Sixaola River as far up as the Yorquín, the line otherwise to follow the White award from the Atlantic to Cerro Pando and the Loubet award from Cerro Pando to the Pacific. It was hoped that the people of both countries, naturally good neighbors, would finally approve the settlement without raising fruitless points of honor, resounding patriotic claims, or professional political opposition. The treaty as signed at San José on September 26, 1938,[52] provided:

Art. 1. The High Contracting Parties agree that the frontier line which is forever to divide the territory of the Republic of Costa Rica from the territory of the Republic of Panama is the following: Starting from the mouth of the river Gandoca in the Caribbean Sea, upstream to the intersection of the course of said river with the geographic meridian which passes through the center of the railroad bridge at Guabito. Thence southward on such meridian 7,388.32 meters [4.6 miles] to the center of the railroad bridge at Guabito. Thence upstream by the *thalweg* of the river Sixaola to its intersection with the line drawn from the center of the "Y" on the main railroad line near Sibube, at the beginning of line 53, running N 84°18′30″ W. Thence on the line thus described for a distance equal to the 929.14 meters [0.58 mile] of said line from the bank of the river to the "Y," plus the distance in the same line from the bank to the center of the river. Thence S 26°59′56″ W 1,204.54 meters [0.75 mile] to the small wooden bridge on railroad line 53, over the first sub-tributary of the second tributary on the left of the river Senosri. Thence S 43°57′21″ W 6,246.61 meters [3.9 miles] to the mouth of the Suribli stream in the river Yorquín, which confluence is 3,891.25 meters [2.4 miles] from the mouth of the latter river in the river Sixaola. Thence by the *thalweg* of the river Yorquín upstream to that one of its sources which is nearest to the watershed, the northern limit of the natural basin of the river Changuinola or Tilorio. Thence up the *thalweg* of such

[50] *Mem. de la Sec. de Rels. Exts. de Costa Rica*, Año 1936 (San José, 1937), xxvii.

[51] See Sec. 15B, this chap., *infra*. Ratifications were exchanged in Washington, July 27, 1939.

[52] Signed by Tobías Zúñiga Montúfar, Foreign Minister, for Costa Rica and Francisco de la Espriella, Minister to Costa Rica, for Panama. *Trat. de Límites, Costa Rica y Panama* (Sec. de Rels. Exts., San José, 1938).

source to said watershed. Thence along said watershed to the line which separates the waters which run toward the Atlantic from those which run toward the Pacific. Thence along said separation of Atlantic–Pacific waters to the point near 9° N latitude highest above Cerro Pando. Thence along the dividing line between the natural hydrographic basin of the river Chiriquí Viejo and the natural tributaries of Dulce Gulf to end at Punta Burica in the Pacific Ocean.

An International Commission of two Engineers, delegated by each of the High Contracting Parties and a third whose designation shall be requested of the President of the Republic of Chile, shall proceed to mark on the ground the line above described.

Art. 2. . . . On the points on which the two delegations are not in agreement, the opinion of the third shall decide, as an unappealable judgment.

Art. 3. The High Contracting Parties shall have in perpetuity, under identical conditions and without limitation or burden of any sort, free navigation of the river Sixaola from its confluence with the Yorquín to its mouth.

Art. 4. [In any transferred territory, titles to real property and other real rights shall be respected.]

Art. 5. The Republics of Costa Rica and of Panama declare formally that in the unlooked for event of the present Treaty not going into effect, neither of them shall suffer any prejudice to their rights as they exist at the time of signature of this instrument.

The treaty was laid before both Congresses, but twenty-four Costa Rican Congressmen advised President León Cortés Castro, who had approved the treaty on September 27, that there was so much opposition that they feared there might be popular disturbances, and on October 8, 1938, he accordingly withdrew the treaty from consideration by the Costa Rican Congress. President Juan Demóstenes Arosemena, laying responsibility for the failure of the agreement on Costa Rica, on October 14, 1938, withdrew the treaty from the Panama National Assembly; and announced a government bill for the appropriation of $1,000,000 for the purchase of arms and ammunition. The entire boundary is 196 miles long. Costa Rican lands in a zone five kilometers (3.1 miles) wide along the frontier with Panama are inalienable.[53]

After more than a hundred years of diplomatic negotiations, two arbitrations and awards, and a near-war, there has never been a boundary fully recognized by these two countries, and an adjustment appears as far away as ever. It seems unlikely that the two nations will really ever go to war over this question alone, and perhaps the latest attempt has at least indicated the possibility of mutual concessions; but each previous failure has needed to be followed by at least a five-year cooling period.

[53] Fiscal Code, Art. 510, subd. 4, as amended by Law 11 of Oct. 22, 1926. *Col. de Leyes de 1926* (San José, 1928), II, 236 at 238.

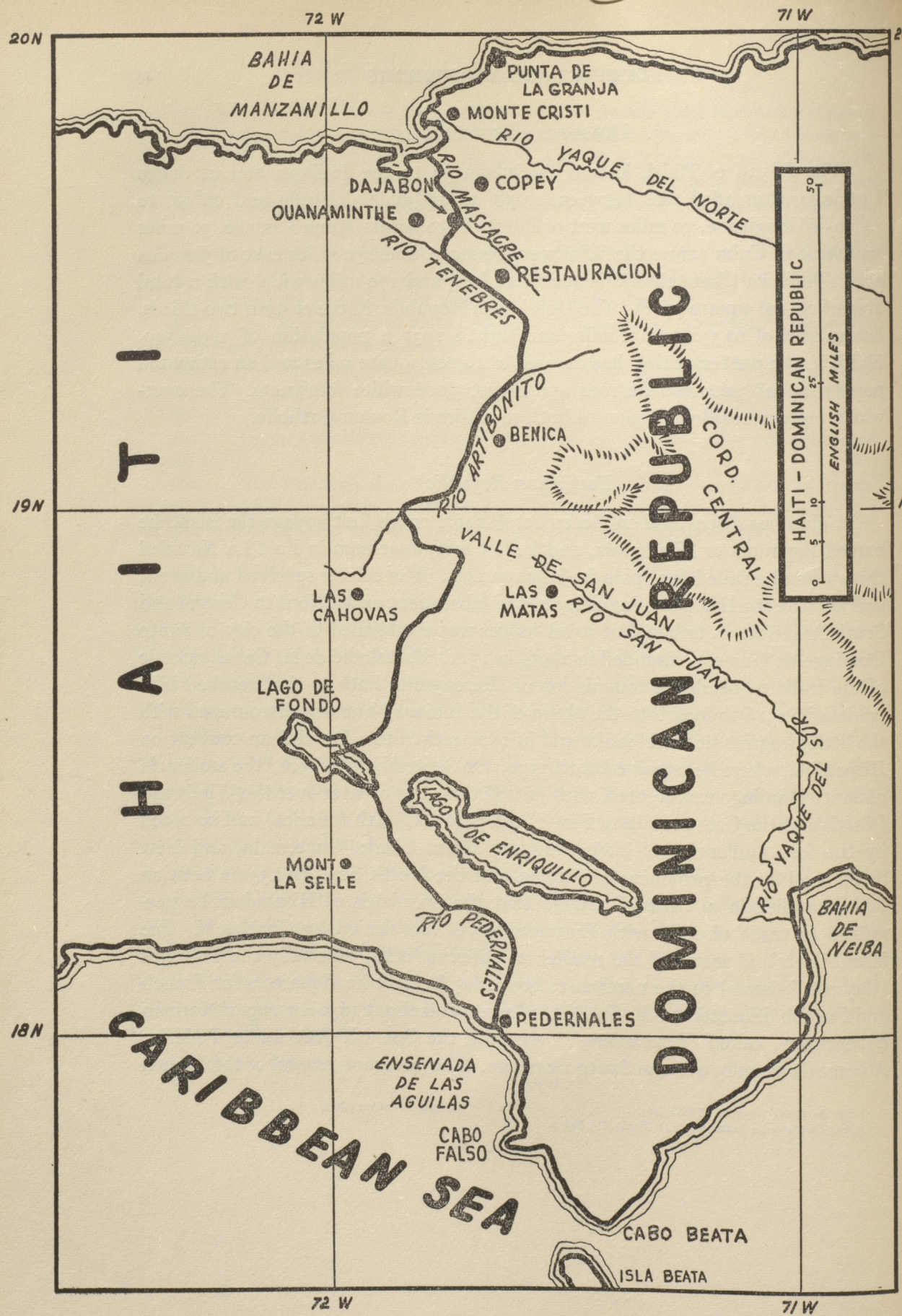
3. Dominican Republic–Haiti

The Island of Haiti, known as Quisqueya to the Indians, and as Santo Domingo after 1697, lies between 19°58′ to 17°36′ N latitude and 68°18′ to 74°30′ W longitude, 70 miles west of Puerto Rico across Mona Passage, 50 miles southeast of Cuba across the Windward Passage, and 130 miles east of Jamaica across Jamaica Channel, and is 400 miles long and 170 miles wide, with a total area of 29,536 square miles. The Dominican Republic, in the eastern two-thirds, has an area of 19,332 square miles and had in 1937 a population of 1,544,549. Haiti, in the western third, has an area of 10,204 square miles and an estimated population of 3,000,000 negroes and about 3,000 white foreigners. The overwhelmingly prevailing religion of both republics is Roman Catholic.

Dominican Republic

Columbus discovered on December 6, 1492, on his first voyage the island he named Española or Hispaniola, and he left forty-four men in Fort La Navidad there when he sailed for Spain in January 1493. The colony survived and grew, and was the starting place for many of the subsequent expeditions to Central and South America. A tribunal of royal judges was established in the city of Santo Domingo de Guzmán (founded in 1496) in 1511. Bartolomé de las Casas, apostle of the Indians, headed a commission of Hieronymite Fathers that reached Hispaniola in 1516 to look into the abuse of the Indians,[1] but was discouraged with the little progress he could make and in 1522 retired to a Dominican convent on Hispaniola, where he remained until 1530. On September 14, 1526,[2] the audiencia of Santo Domingo was created, with jurisdiction then or later over the Windward Islands and the Coast of Tierra Firme (and parts of South America) and bounded by the four audiencias of New Granada, Tierra Firme, Guatemala, and New Spain, and by the provinces of Florida and the North Sea. In 1532 a petition by the audiencia of Santo Domingo that the Spaniards of Hispaniola be permitted to trade directly with European ports was denied by Charles V. The island itself and many of the smaller neighboring ones, especially the Tortugas (Cayman Islands) to the northeast, from 1625 became headquarters for French and English filibusters to the Spanish colonies; and about 1630 a group of Norman adventurers, called "boucaniers," [3] escaping the Spanish fleet under Federico Alvarez de Toledo, overran Santo Domingo. The governor-general of the French

[1] *Rec. des Cours* (1930, I), XXXI, 215.
[2] *Recopilación de las Indias*, Libro II, Titulo XV, Ley 2.
[3] Boucán, a salting place.


72 W
71 W
20N
19N
18N
BAHIA DE MANZANILLO
PUNTA DE LA GRANJA
MONTE CRISTI
RIO YAQUE DEL NORTE
DAJABON
COPEY
OUANAMINTHE
RIO MASSACRE
RESTAURACION
RIO TENEBRES
RIO ARTIBONITO
BENICA
CORD. CENTRAL
VALLE DE SAN JUAN
LAS CAHOVAS
LAS MATAS
RIO SAN JUAN
LAGO DE FONDO
LAGO DE ENRIQUILLO
RIO YAQUE DEL SUR
BAHIA DE NEIBA
MONT LA SELLE
RIO PEDERNALES
PEDERNALES
ENSENADA DE LAS AGUILAS
CABO FALSO
CABO BEATA
ISLA BEATA
HAITI
DOMINICAN REPUBLIC
CARIBBEAN SEA
HAITI - DOMINICAN REPUBLIC
ENGLISH MILES
0
5
10
25
50

Antilles took control in 1641, and in 1665 France sent out a colonial governor. The Spanish governor Francisco de Segura and the French governor Captain Levasseur in 1680 agreed on the Rebouc River as the dividing line between their territories. Jean Baptiste Ducasse, the French governor of Haiti, took Cartagena, on the mainland (Colombia) in 1697, but it was restored to the Spanish, and the western third of the island, thereafter called Haiti, was restored to France under the terms of the treaty of peace between France and Spain signed at Ryswick on September 20, 1697.[4] By the treaty of peace ending the war that broke out in 1793 between France and Spain, signed at Basle on July 22, 1795,[5] it was agreed:

Art. 4. The French Republic restores to the King of Spain all the conquests which it has made in his domains during the present war.

Art. 9. In return for the restitution specified in Article 4 the King of Spain cedes and abandons in full right to the French Republic the whole Spanish part of the island of Santo Domingo in the Antilles.

As soon as England heard of the transfer, she protested to Spain that it was contrary to the provisions of the Peace of Utrecht of 1713. France accordingly, although as a sign of her sovereignty she sent out a commissioner [6] with the acquiescence of the Spanish authorities, did not occupy the eastern part of the island until January 21, 1801. A colonial assembly of ten deputies met at Port-au-Prince and among other laws passed on July 14, 1801, one dividing the island into six departments: the North, the West, the South, Louverture, Engaño or Ozama, and Samana or Cibao, the two last formed of the eastern territory ceded in 1795. In 1804 the inhabitants of the western part of the island proclaimed their independence from France, as the state of Haiti,[7] and in 1805 the inhabitants of the department of Samana rose and voluntarily joined Haiti. In 1807 the French General Ferrand, commanding at Santo Domingo, succeeded in detaching Samana from Haiti and maintaining it as an autonomous state under the protection of France, but in 1809 the population of the whole eastern part of the island rose against the French and they were obliged to evacuate. One faction undertook to return the island to Spain, and the Spanish government sent Francisco Javier Caro, as commissioner, to Santo Domingo, where he took over in the name of Ferdinand VII the territory in the eastern part which the French had evacuated. A British squadron took the city of Santo Domingo on July 9, 1809,

[4] Article 9. Knapton, *General Collections of Treaties* (2d ed., London, 1732), I, 333. *Disp. Compl. de las Leyes de Indias* (Madrid, 1930), I, 43.

[5] Martens, *Rec. des Prin. Tr.* (Gottingue, 1800), VI, 542; (2e ed., Gottingue, 1829), VI, 124. *Trats. de España* (Cantillo, Madrid, 1843), 654.

[6] Instructions. *Trats. de España* (Cantillo, Madrid, 1843), 662.

[7] Theodore Lothrop Stoddard, *The French Revolution in San Domingo* (Boston, 1914).

and when the war was ended by the treaty of peace signed at Paris, May 30, 1814,[8] it was provided:

> Art. 8. England returns to France [all, except Tobago and Saint Lucia, of the colonies and islands which France possessed in American waters on Jan. 1, 1792, and also] the part of Santo Domingo ceded to France by the Peace of Basle, and which His Christian Majesty [of France] retrocedes to His Catholic Majesty [of Spain] in full property and sovereignty.

But again the European dispositions of their territory did not satisfy the inhabitants of Santo Domingo; and though some of the settlers of the eastern part proclaimed their independence of Spain, December 1, 1821,[9] and asked to be incorporated in Colombia, which could not aid them, in 1820 and 1821 the citizens of the capital and most of the smaller towns sent agents to Haiti to ask admission to that republic. This was granted; the other towns joined; by January 19, 1822, all the former Spanish territory had been annexed, and President Boyer of Haiti entered Santo Domingo on February 9, 1822.[10] France, ignorant of what had happened in the island, invited Spain, then her ally, to reclaim the eastern portion, which suggestion Spain was not slow to follow.

In January 1830 [11] Ferdinand VII of Spain sent Felipe Fernández de Castro, intendant of Cuba, to Port-au-Prince to negotiate with President Boyer for the return to Spain of the eastern portion of the island. De Castro maintained that, although Haiti for her own preservation might occupy temporarily the neutral territory of the Spanish part of the island, it was without any legitimate title. The Haitian commissioners asserted, on the other hand, that the whole of the island was included in the territory declared free from French domination on January 1, 1804; that it was only because of their civil war that the Haitians did not attack those who in 1809 raised the Spanish flag in the east; that Spain made no protest from 1809 to 1821 at the Haitian constitution of December 27, 1806,[12] which stated that the whole island of Haiti, with the adjacent islands dependent on it, formed the territory of the republic; that the proclamation of independence in Santo Domingo on December 1, 1821, and federation with Colombia were repudiated by the people; that the President of Haiti had entered Santo Domingo on February 9, 1822, and the Haitian flag had since flown over the whole island, in accordance with the right acquired eighteen years before; so that any other rights were lost and Haiti had nothing to restore to the Spanish king. After a further exchange of notes, in which a Spanish ultimatum for the return under

[8] Martens, *Nouv. Rec. de Traités* (Gottingue. 1818), II, 42. *Trats. de España* (Cantillo, Madrid, 1843), 734. Same as Article 8 in Treaty of Peace between France and Austria and her Allies at Paris on May 30, 1814. Martens, *op. cit., supra*, 1.

[9] 8 *British and Foreign State Papers* 557.

[10] 9 *British and Foreign State Papers* 817, 884, 910, 959.

[11] 17 *British and Foreign State Papers* 943. Martens, *Nouv. Supp. au Rec. de Traités*, III (1842), 492.

[12] See this Sec., Note 51, *infra*.

threat of extreme measures was met by the Haitians with an affirmation of their confidence in leaving "the arbitration of their cause in the hands of the Great Regulator of the destinies of Nations," the Spanish envoy departed. Despite the opportunities repeatedly offered by the incessant internal strife, Spain never made further claims to the eastern territory. President Boyer was expelled from Haiti in 1843, and on February 27, 1844, a successful revolt took over the city of Santo Domingo and captured and expelled the Haitian troops. On November 6, 1844, a constitution was promulgated for the Dominican Republic as a separate state, but Haiti continued until 1856 to attempt re-subjugation by force.

The second constitution of February 27, 1854,[13] provided:

Art. 2. The Spanish part of the Island of San Domingo and its adjacent islands form the territory of the Dominican Republic; its limits are the same as in the year 1793, and divide it on the west from the French part. These limits are definitely fixed.

A third constitution was promulgated on December 23, 1854. Applications to Spain by the annexationists were made in 1843 through Jerónimo Valdéz, captain-general of Cuba; in 1844 through Count Mirasol, captain-general of Puerto Rico; in 1845 at the Court of Madrid itself; in 1849 through Count d'Alcoy, captain-general of Cuba; in 1853 through Fernando Norzagaray, governor of Puerto Rico, and in 1854 by their own envoy, Ramon Mella, again at Madrid; all were politely heard but were without the least practical success. General Mella left in Madrid Raphael María Baralt, to await a favorable occasion to reopen negotiations; and on February 18, 1855, Sr. Baralt signed at Madrid with Foreign Minister Claudio Anton de Luzuriaga a treaty [14] in which Isabella II renounced:

Art. 1. . . . the sovereignty, rights and interests which belong to her over the American territory formerly known under the denomination of the Spanish Part of the Island of Santo Domingo, now the Dominican Republic, (and)

Art. 2. Therefore recognizes as a free, sovereign and independent nation the Dominican Republic with all the territories which do now or in the future may constitute it; territories which Her Majesty desires and hopes may be preserved always under the dominion of the race which now inhabits them, without ever, in whole or in part, passing into the hands of alien races.

The fourth constitution, of February 19, 1858,[15] provided:

Art. 1. The territory of the Republic comprehends all that which was called the Spanish part of the Island of Santo Domingo and its adjacent islands. The boundaries stipulated by the Treaty of Aranjuez of June 3, 1777, which divided it from the French part until 1793, remain definitively fixed.

[13] 46 *British and Foreign State Papers* 1319.

[14] Ratified by the Dominican Republic, May 9, 1855; ratified by Spain, Aug. 2, 1855; ratifications exchanged at San Lorenzo el Real (del Escorial), Aug. 19, 1855. *Trats. de España* (Janer, Madrid, 1869), 92. 46 *British and Foreign State Papers* 1283.

[15] 48 *British and Foreign State Papers* 1052.

In October 1858 the Dominican government again sought in Madrid protection against Haiti. In 1859 President Pedro Santana convoked a special session of the Senate, then the only chamber of the Dominican legislature, and had passed a resolution declaring annexation to the United States;[16] but the United States government rejected the offer. On April 27, 1860, President Santana wrote Queen Isabella II, imploring her to remember the seventeen years of continual unrest suffered by the Dominican people; and finally the Spanish government consented to consider annexation, if it could be shown to be the spontaneous will of all the Dominican people. Accordingly, March 16 to 26, 1861, in a plebiscite, the regions not then under the jurisdiction of Haiti declared themselves in favor of annexation. General Santana proclaimed annexation on March 18[17] and on May 19, 1861,[18] Queen Isabella II signed at Aranjuez a royal decree which read in part as follows:

> Art. 1. The territory which constitutes the Dominican Republic is reincorporated with the Monarchy;
>
> Art. 2. The Captain-General Governor of Cuba, in accordance with instructions from my Government, will make suitable arrangements for the execution of this decree.

General Santana was appointed captain-general and governed the province of Dominica until his death, June 14, 1864.

The United States, in the midst of its own Civil War, could not give much attention to this reëntry of the Spanish monarchy upon American soil from which it had once been ousted, but Haiti objected in vigorous terms, Peru protested,[19] and the Dominicans themselves proceeded to demonstrate to Spain the real nature of the plebiscite by risings which began in May and spread throughout the country. The War of the Restoration began at Capotillo on August 16, 1863, and, despite a paper blockade declared by the Spanish government,[20] the small Spanish army was driven into Santo Domingo City. After a request from the insurgents which the president of Haiti obtained to save the face of the Spanish government, all Spain's troops were withdrawn, and on May 1, 1865,[21] Queen Isabella II at Madrid signed a law repealing the royal decree of May 19, 1861.

The fifth constitution, of September 27, 1866,[22] provided:

> Art. 2. The territory of the Republic comprises all that was formerly denominated the Spanish Part of Santo Domingo and its adjacent islands. Its boundaries on the side of Haiti are the same as were stipulated between France and Spain, in the Treaty of Aranjuez of June 3, 1777. Neither the whole nor any part of the Republic can ever be alienated.

[16] *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), VI, 23, 196.

[17] 52 *British and Foreign State Papers* 1221.

[18] *Trats. de España* (Janer, Madrid, 1869), 232. 52 *British and Foreign State Papers* 1351. *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), VI, 209.

[19] On Aug. 24, 1861. *Arch. Dipl.*, III (1861), 255.

[20] 54 *British and Foreign State Papers* 536.

[21] *Trats. de España* (Janer, Madrid, 1869), 375. 58 *British and Foreign State Papers* 239. *Arch. Dipl.* (1865), III, 235.

[22] 58 *British and Foreign State Papers* 333.

The Dominicans feared for their independence, not yet recognized by Haiti, but President Fabre Nicholas Geffrard of that country seemed more inclined to establish friendly relations. Preliminary peace articles, the first diplomatic agreement since the separation in 1844, were signed at Santo Domingo on July 26, 1867,[23] but the Haitian Assembly refused to ratify them and the Dominican government grew still more uneasy. President José María Cabral on October 7, 1867,[24] denied that Samana had been sold to United States citizens, or that any land had been alienated to any private person or power.

The island of Alta Vela or Alto Velo, fifteen miles southwest of Cape Beata, was claimed by a firm of United States citizens, under the guano islands law,[25] but after a report from William H. Seward, United States secretary of state,[26] the claim was abandoned. President Buenaventura Báez turned to Washington, and negotiations with the government of President Ulysses S. Grant resulted in a promise of annexation and a lease of the Samana peninsula for ninety-nine years to the United States. Annexation of the republic to the United States, supported by the presence of United States navy vessels, after approval by the Dominican Senate and a vote by the people, was proclaimed in Santo Domingo on February 16, 1870. The treaty signed at Santo Domingo City on November 29, 1869, by General Orville E. Babcock under instructions from President Grant dated July 15, 1869, was attacked in the Senate in December 1870 and April 1871 [27] under the leadership of Senators Charles Sumner of Massachusetts and Carl Schurz of Missouri, and rejected, and the Samana lease was ordered to be cancelled. President Báez thereupon proposed to cede Samana to a Boston syndicate to establish a United States colony there, leading to a near-protectorate, but this plan was annulled by a revolution [28] which set up a new Dominican government opposed to the scheme.

The constitution of 1866, which had been practically suspended since General Ignacio María González became president on January 19, 1874, with extraordinary powers approved by a plebiscite of August 21–25, 1874, was amended on April 12, 1875,[29] after the signature of the treaty of November 9, 1874, with Haiti, to read only:

> Art. 2. The territory of the Republic comprises all that was formerly denominated the Spanish Part of Santo Domingo and its adjacent islands. A special treaty shall fix the boundaries on the side toward Haiti.

[23] Approved by Dominican Government and Congress, Dec. 24, 1867. *U. S. For. Rel.*, 1866, I, 114, 124; II, 510–518.

[24] *Arch. Dipl.*, III (1868), 1071.

[25] Act of Aug. 18, 1856, c. 164. 11 Stat. L. 119. Moore, *Dig. Int. Law* (Washington, 1906), I, 570.

[26] March 6, 1868, transmitted by President Andrew Johnson to U. S. Senate. S. Exec. Doc. 38, I, Ser. 1316, 40th Cong., 2d Sess. (Washington, 1867–68).

[27] *Cong. Globe*, 1871, 42d Cong., 1st Sess., 294–305, 469, 492; 2d Sess., 261. Hatch Claim, 41st Cong., 2d Sess., S. Rep. 234, Ser. 1409. *For. Aff.*, IX (1931), 556.

[28] *U. S. For. Rel.*, 1871, pp. 566–572; 1873, I, 218–224, 447–480; 1874, pp. 582–626.

[29] *Const. Pol. de la Rep. Dom.* (Santo Domingo, 1875).

A law of October 9, 1876, invalidated all acts of the dictatorship since May 14, 1874, and reëstablished the constitution of 1866. The sixth constitution of 1876, instead of recognizing the territorial requirements of the treaty of November 9, 1874, because of the threat of renewed difficulties with Haiti, by way of so-called reprisal asserted again:

> Art. 3. The Territory of the Republic is and shall be inalienable; its boundaries comprise the territory formerly denominated the Spanish Part of the Island of Santo Domingo and its adjacent islands. These boundaries are the same as those which in 1793 separated the western coast from the French Part, boundaries stipulated in the Treaty of Aranjuez signed June 3, 1777.

The seventh constitution, of November 17, 1887,[30] provided:

> Art. 3. The territory of the Republic is and shall be inalienable, and its boundaries comprise all that was formerly denominated "the Spanish Part of the Island of Santo Domingo" and its adjacent islands. These boundaries are the same as those which in 1793 divided it on the west from the French Part, as stipulated in the Treaty of Aranjuez signed June 3, 1777.

The eighth constitution, of June 20, 1896,[31] provided:

> Art. 3. The territory of the Republic is and shall be inalienable. Its limits, comprising all that was formerly denominated the Spanish Part of the Island of Santo Domingo and its adjacent islands, are, consequently, the same which by virtue of the Treaty of Aranjuez of 1777, divided it in 1793 from the French Part, on the western side; and may suffer no other modifications than those authorized by the plebiscite of June 1 and 2, 1895, and which may be derived from the Dominican-Haitian Arbitration Convention of July 3, 1895.

Following an award of $4,500,000 against the Dominican government by an arbitration commission on claims of the San Domingo Improvement Company of New York and its subsidiaries, President Carlos F. Morales L. after being helped to power by the United States in June 1904,[32] caused a protocol to be signed with the United States on February 4, 1905,[33] providing that the United States should (Article 1) attempt to adjust the debt of the Dominican Republic, (Article 2) administer the customs houses for the service of the debt, and (Article 7) at request furnish such other assistance as the United States might deem proper to restore the credit, preserve the order, increase the efficiency, and advance the material progress and welfare of the Dominican Republic. The United States Senate refused to ratify the treaty, considering that it meant the establishment of a protectorate by the United States, but President Theodore Roosevelt made an executive arrangement with the republic which embodied all the essen-

[30] 79 *British and Foreign State Papers* 755.

[31] Other articles amended, June 10, 1907. *Amer. Const'ns* (Rodríguez, Washington, 1907), II, 10.

[32] *Amer. J. Int. Law*, XXX (1936), 385.

[33] Message of President Theodore Roosevelt, Feb. 15, 1905. *U. S. For. Rel.*, 1904, p. 371; 1905, pp. 298–412. *For. Aff.*, IX (1931), 207. *Arch. Dipl.*, 3e Sér., XCIII (1905), 368.

tial features of the treaty, and the agreement was put into operation on April 1, 1905. A treaty signed at Santo Domingo City on February 8, 1907,[34] (revised in 1924) provided for assistance by the United States for fifty years in the collection [35] and use of the customs duties of the republic, but control was relinquished by the United States by an agreement signed at Washington on September 24, 1940, by ex-President Trujillo and Secretary of State Hull.

The ninth constitution of September 9, 1907, and the tenth constitution of February 22, 1908,[36] both provided:

> Art. 3. The territory of the Republic is and shall be inalienable. Its boundaries, which comprise all that formerly called the "Spanish Part" of the Island of Santo Domingo and the islands adjacent thereto, are therefore the same which, by the treaty of Aranjuez of 1777, separated in 1793 the Spanish from the French Part on the west; and they shall suffer no modifications except those legally authorized and those which may be derived from the plebiscite of the 1st and 2nd of June, 1895.

The assassination of President Ramón Cáceres on November 18, 1911, was followed by dissensions and civil war; and two commissions from the United States [37] having failed to pacify the country or induce united support of any elected president, the United States formally intervened [38] by the landing of marines in Santo Domingo on May 5, 1916, and later another detachment under Captain Harry S. Knapp of the U.S.S. *Olympia*. The Dominican Republic proclaimed its neutrality in the World War on November 25, 1914. The United States on November 29, 1916,[39] established a military government under high United States officers. Rear Admiral Thomas Snowden was put in charge of the administration of Dominican affairs on February 25, 1919; he was succeeded by Rear Admiral Samuel S. Robison in June 1921, relieved on February 19, 1922, by Brigadier General Harry Lee, Admiral Robison returning on July 24, 1922, to serve until October 19, 1922. The Dominicans appealed to the new formed League of Nations in 1919 and to Washington, and after the announcement of the "Harding Plan" on June 14, 1921, a provisional native government was set up on October 21, 1922.[40] The Dominican Republic was admitted to the League of Nations, September 29, 1924.

[34] *Amer. J. Int. Law*, I (1907), 287, 978; I (1907), Supp., 408. *U. S. For. Rel.*, 1907, I, 306–322. *For. Aff.*, IX (1931), 557. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., I (1909), 637.

[35] The United States receivers have been:
Norman L. Orme, Jan. 10, 1914–March, 1937.
Thomas Pearson of North Carolina, March 27, 1937–to date.

[36] 101 *British and Foreign State Papers* 975. *U. S. For. Rel.*, 1907, I, 361–379; 1908, pp. 258–272.

[37] *Rec. des Cours* (1930, II), XXXII, 125.

[38] *Amer. J. Int. Law*, XVI (1922), 433. Carl Kelsey, "The American Intervention in Haiti and the Dominican Republic" (1922), *Ann. Amer. Acad. Pol. & Soc. Sci.*, C. 112. *Rev. gén. de dr. int. pub.*, XVIII (1911), 401, 499; XIX (1912), 73; XXI (1914), 425. *For. Aff.*, VI (1928), 583.

[39] *Amer. J. Int. Law* XI (1917), 394; IX (1917), Supp., 94. *U. S. For. Rel.*, 1917, pp. 707–720.

[40] A. C. Millspaugh, "Our Haitian Problem," *For. Aff.*, VII (1929), 556. Sumner Welles, *Naboth's Vineyard* (New York, 1928), 2 vols.

The eleventh constitution of June 13, 1924,[41] provided:

Art. 3. The territory of the Republic is and shall be inalienable. Its limits, which include all that was formerly called the Spanish Part of the Island of Santo Domingo and the adjacent islands, are, consequently, the same which by virtue of the Treaty of Aranjuez of 1777 divided it in 1793 from the French Part on the western side, and may suffer only those modifications legally authorized and derivable from the plebiscite of June 1 and 2, 1895.

The twelfth and thirteenth constitutions of June 20, 1929,[42] and June 9, 1934, provide:

Art. 3. The territory of the Republic, including that of the adjacent islands, is and shall be inalienable. Its limits, which include all that was formerly called the Spanish Part of the Island of Santo Domingo and the adjacent islands, are, consequently, on the western side, the same as those which, in 1793, divided it from the French Part by virtue of the Treaty of Aranjuez of 1777. Only on that side may they be subject to modifications, provided they are legally established by means of a treaty with the Republic of Hayti duly approved by Congress, or by means of an arbitral judgment the protocol of *compromis* of which shall be approved by Congress, and the award of which shall be free from any defect of nullity recognised by international law.

Transitory Provision. . . . When the final frontier which separates the territory of the Republic from the territory of the Republic of Hayti has once been determined by one of the two methods stipulated in the third article of this constitution, and after it has been traced on the ground, paragraphs 2 and 3 of the above-mentioned article 3 shall be *ipso facto* abrogated, and the article shall only read as follows: "The territory of the Republic, including that of the adjacent islands, is and shall be inalienable."

Military occupation by the United States continued for eight years. The possibility of its end began to be considered with the signing of a convention at Santo Domingo on June 12, 1924,[43] by which the Dominican Republic agreed to recognize as valid all the executive orders and resolutions promulgated by the military government. A project for a memorial to Columbus, first suggested by Antonio del Monte y Tejada, a Dominican historian, in 1852, was taken up by the Dominican government, and a national Columbian committee appointed on October 12, 1892.[44] A lighthouse was selected in 1914 as the most appropriate monument, to be erected at a cost of $1,500,000 on twenty-five hundred acres given by the Dominican government for a Pan-American park, on Torrecilla Point, across the Río del Ozama, east of Santo Domingo City (now Ciudad Trujillo). The project was approved in theory by the Fifth Pan-American Conference at Santiago, Chile, on April 27, 1923,[45] and has been endorsed by Argen-

[41] *Consts. Vigs.* (Altamira, Madrid, 1926), II, 113.

[42] 130 *British and Foreign State Papers* 552.

[43] Ratified by the Dominican Republic, June 24, 1924; ratified by the United States. Jan. 21, 1925; ratifications exchanged at Santo Domingo, Dec. 4, 1925. 44 Stat. L. (III) 2193. *U. S. Treaty Series*, No. 729. *Amer. J. Int. Law*, XX (1926), Supp., 53. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XV (1926), 28.

[44] Reorganized, Oct. 12, 1923.

[45] *Rev. de Der. Int.* (Habana, 1924), V, 141.

tina, Colombia, Cuba, Haiti, Mexico, Salvador, and the United States.[46] A competition of 455 architects from forty-eight countries closed May 15, 1931, and the design of J. L. Gleave of Manchester, England, for a huge recumbent cross, head to the west, was selected as the winning plan. The Dominican government has put up $300,000 and is endeavoring to obtain the rest of the necessary funds by contribution from the American nations. On July 2, 1934, President Franklin D. Roosevelt caused the last United States marines to be withdrawn.

On April 4, 1935, Amadeo Barletta, honorary Italian consul at Santo Domingo, said to have represented various commercial enterprises rivalling some in which President Rafael Leónidas Trujillo Molina was interested, was arrested and after trial fined for conspiracy against the life of the president and for evasion of taxes. During his imprisonment in May 1935, Italy, with notice to the United States, threatened to send a warship to procure his release, and he was let go on May 21, at first as reported under bail of $50,000, later unconditionally. On January 10, 1936, the capital, Santo Domingo, was renamed Ciudad Trujillo. The Dominican Republic declared neutrality in the Hitler war on September 7, 1939.[47] Ex-President and "Benefactor" Trujillo donated to the European refugees' committees twenty-four thousand acres of land near Sosua and on January 30, 1940, presided at the signing in Ciudad Trujillo of contracts for the bringing over and settling of five hundred families from Germany and Poland, planned to be the first of twenty-five thousand Jewish immigrants. In November 1940 it was announced that Austrian Catholic refugees would be transplanted and colonized in the same manner.

Haiti

In 1801 Dominique François Toussaint l'Ouverture led an uprising of slaves in Haiti and, aided by yellow fever, defeated an expedition under Leclerc and Rigaud sent by Napoleon to resubjugate the island, averted a threat from a British fleet, promulgated a constitution for the French colony of San Domingo, and maintained himself until May 1, 1802. The constitution of July 1, 1801,[48] provided:

> Art. 1. Santo Domingo for its whole extent and Samana, Tortue, Gonave, the Cayemites, Île-à-Vache, Saone and other adjacent islands form the territory of one single Colony, which makes part of the French Empire, but which is subject to special laws.

[46] H. Con. Res. 41, 69th Cong., 2d Sess. *Cong. Rec.*, 68th Cong., 1st Sess., LXV, II, 1778, 1779; III, 2293.

[47] *Decr. Ejec.*, 378. *Gac. Of.* (1939), Año LX, Num. 5355.

[48] *Consts. d'Haiti* (Janvier, Paris, 1886), 7. 16 *British and Foreign State Papers* 716.

Jean Jacques Dessalines, who had been a governor-general for the French, succeeded him, proclaimed Haiti's independence on January 1, 1804, and had such military success against the French [49] that he united the island under one government and ruled as Emperor Jean Jacques I from June 16, 1805, until he was assassinated on October 17, 1806. The second constitution of May 20, 1805,[50] provided:

> Art. 12. No white person, whatever be his Nation, shall set foot on this territory with the title of Master or Proprietor; and shall not hereafter acquire any property in it.
>
> Art. 15. The Haytian Empire is one and indivisible.
>
> Art. 18. The islands of Samana, Tortue, Gonaive, the Cayemites, Île-à-Vache, Saone and other adjacent islands are integral parts of the Empire.

The third constitution of December 27, 1806,[51] changing the empire into a republic, provided:

> Art. 38. No white person, whatever his Nation, may set foot on this territory with the title of Master or Proprietor.
>
> Art. 40. The Island of Haiti [above called Santo Domingo] with the adjacent islands which depend on it, forms the territory of the Republic.
>
> Art. 41. The Republic of Haiti is one and indivisible.

Henri Cristophe ruled in the north as King Henri I from December 28, 1806, until, unable to gain the mountain citadel of La Ferrière for refuge and deserted even by his own guard, he shot himself in his palace of Sans Souci on October 8, 1820. In 1814 France sought unsuccessfully to have Louis XVIII proclaimed king in Haiti.[52] Jean Pierre Boyer, who had been declared president of the southern part of Haiti on March 31, 1818, gained control of the northern portion as well after October 1820, and from February 9, 1822, when he entered Santo Domingo City in triumph, until March 14, 1843, he ruled the whole island.

Charles X of France declared in an ordinance of April 17, 1825,[53] that:

> Art. 3. We grant . . . to the present inhabitants of the French part of the Island of Santo Domingo full and entire independence in their government,

and in a treaty of friendship signed at Port-au-Prince on February 12, 1838,[54] France recognized the republic of Haiti as free, sovereign, and independent. A

[49] At the request of France, the United States suspended all commerce with the part of Santo Domingo not in the possession of France, from Feb. 28, 1806, to April 25, 1808. Act of Feb. 28, 1806, c. 9; 2 Stats. 351. Act of Feb 24, 1807, c. 17; 2 Stats. 421. 4 *British and Foreign State Papers* 328; 16 *ibid.* 662.

[50] *Consts. d'Haiti* (Janvier, Paris, 1886), 30. 16 *British and Foreign State Papers* 728. "Napoleonic Code," *Va. Law Rev.*, XIX (1933), 368.

[51] Other articles revised, June 2, 1816. *Consts. d'Haiti* (Janvier, Paris, 1886), 49, 112. 16 *British and Foreign State Papers* 735, 739.

[52] 1 *British and Foreign State Papers*, II, 1053.

[53] *Rec. de Tr. et Conv. de Haiti* (Léger, 1891), 1. Martens, *Nouv. Rec. Gén. de Traités*, VI (1828), 738. 12 *British and Foreign State Papers* 688; 13 *ibid.* 999.

[54] Ratifications exchanged at Paris, May 28, 1838. *Rec. de Tr. et Conv. de Haiti* (Léger, 1891), 23. 26 *British and Foreign State Papers* 1092.

completely negro republic, controlled by the descendants of ex-slaves, was set up and the fourth constitution, of December 30, 1843,[55] provided:

Art. 1. The Island of Haiti and the adjacent islands which depend on it form the territory of the Republic.

Art. 5. The Haitian Republic is one and indivisible, essentially free, sovereign and independent. Its territory is inviolable and cannot be alienated by any Treaty.

Art. 8. No white person may acquire the quality of being a Haitian nor the right of possessing any immovable in Haiti.

The fifth constitution, of November 14, 1846,[56] provided:

Art. 1. The Island of Haiti and the adjacent islands which depend on it form the territory of the Republic.

Art. 4. The Republic of Haiti is one and indivisible, essentially free, sovereign and independent. Its territory is inviolable and cannot be alienated by any treaty.

Art. 7. No white person, whatsoever his Nation, may set foot on Haitian territory with the title of master or of proprietor or can in the future acquire any immovable there, or the quality of Haitian.

The sixth constitution, promulgated August 6, 1874,[57] provided:

Art. 2. Its territory and the adjacent islands which depend on it are inviolable and cannot be alienated by any treaty or convention. These adjacent islands are: Tortue, Gonave, Île-à-Vache, the Cayemittes, Navase, Grosse Caille and all others found within the range of bounds established by the law of nations.

Art. 3. The territory of the Republic . . . has for boundary-frontiers all the positions actually occupied by Haitians.

Art. 7. No one not a Haitian may be owner of immovables in Haiti. [Naturalization, in some cases, by the Legislature after 7 years residence.]

The seventh constitution, of December 16, 1888, [58] provided:

Art. 1. The territory [of the Republic of Haiti] and the adjacent islands which depend on it are inviolable, and may not be alienated by any treaty or convention. These adjacent islands are Tortue, Gonave, Île-à-Vaches, the Cayemittes, Navaze, Grande Caye and all others which are found within the range of bounds established by the law of nations.

Art. 2. The territory of Haiti . . . has for boundary-frontiers all the positions actually occupied by Haitians.

Art. 3. No one not a Haitian may be owner of immovables in Haiti [but the Legislature on proposal of the executive may grant immovable property to foreign companies of recognized public utility, but such property shall not give rise to any diplomatic intervention].

Art. 4. In case of loss occurring from civil and political troubles, neither Haitian nor foreigner may claim any indemnity.

[55] *Consts. d'Haiti* (Janvier, Paris, 1886), 154. 31 *British and Foreign State Papers* 17.

[56] *Consts. d'Haiti* (Janvier, Paris, 1886), 195. 34 *British and Foreign State Papers* 1198. Other articles revised, Dec. 14, 1848. 37 *British and Foreign State Papers* 735.

[57] *Consts. d'Haiti* (Janvier, Paris, 1886), 359, 421. *Recop. de Consts. Vigs.* (de Heredia, Madrid, 1884), II, 257. *Amer. J. Int. Law*, XXI (1927), 697. 65 *British and Foreign State Papers* 1260. Amended, Dec. 18, 1879.

[58] *Arch. Dipl.*, 2e Sér., XXX (1889, II), 81.

The eighth constitution, of October 9, 1889,[59] provided:

Art. 1. The Republic of Haiti is one and indivisible, essentially free, sovereign and independent. Its territory and the islands which depend on it are inviolable and cannot be alienated by any Treaty or any Convention. The adjacent islands are: Tortue, Gonave, Île-à-Vaches, the Cayemittes, Navaze, Grande Caye, and all others to be found within the range of bounds established by the law of nations.

Art. 6. No one not a Haitian may be owner of immovables in Haiti, under any title, or acquire any immovable.

In March 1909 the United States sent an army mission to Haiti. French and British bondholders grew increasingly uneasy, and in 1914 appeared to be preparing, with Germany, for some kind of international control.

In severe political rioting in Port-au-Prince, after several months of disorders and lack of efficient government involving many partisans of both factions, President Vilbrun Guillaume Sam was dragged from the French Legation and killed on July 28, 1915, and in the interests of bondholders and claimants, as well as of good order, the United States on the same day landed marines at Cape Haytien under Rear Admiral William B. Caperton. On August 16, 1915, Admiral Caperton took charge of the customs houses. Under a treaty signed at Port-au-Prince, September 16, 1915,[60] the United States assumed control of the finances, customs, and constabulary of the country.[61] On June 17, 1917, Haiti broke off diplomatic relations with Germany.

The ninth constitution, adopted June 19, 1918,[62] at the behest of the United States, omitted the provision against foreign ownership of land, which had been in every Haitian constitution since independence in 1804, and provided:

Art. 1. The Republic of Haiti is one and indivisible, free, sovereign and independent. Its territory, including therein the adjacent islands, is inviolable and cannot be alienated by any treaty or by any convention.

Art. 5. The right to own immovable property is granted to the foreigner resident in Haiti and to companies formed by foreigners for the needs of their residences, agricultural, commercial and industrial enterprises, or education. This right shall end in a period of five years after the stranger shall have ceased to reside in the country or the companies shall have ceased operations.

Haiti became a member of the League of Nations, June 30, 1920.

[59] *Cod. de Consts. Vigs.* (Ovalle, Sevilla, 1897), I, 825. 81 *British and Foreign State Papers* 64.

[60] Ratified by Haiti, Nov. 11, 1915; ratified by the United States, May 20, 1916; ratifications exchanged at Washington, May 3, 1916. *U. S. Treaty Series*, No. 623. *Treaties of the U. S.* (Malloy, 1923), III, 2673. *U. S. For. Rel.*, 1915, pp. 431–461; 1916, pp. 310–385. *Amer. J. Int. Law*, X (1916), 859; X (1916), Supp., 234; XXX (1936), 474n. Extended by Additional Act, March 28, 1917; terminated by Agreement of Aug. 7, 1933. *U. S. Exec. Agreement Ser.* No. 46. *U. S. For. Rel.*, 1917, pp. 802–813. *U. S. For. Rel.*, "The Lansing Papers," (1940), II, 523–527. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., IX (1919), 354; XV (1926), 12, 14.

[61] *U. S. For. Rel.*, 1919, II, 303–373. *Amer. J. Int. Law*, XVI (1922), 607. *Ann. Amer. Acad. Pol. & Soc. Sci.* (1931), CLVI, 110. *For. Aff.*, III (1924), 51; VI (1928), 583, 615; VIII (1930), 532. *Survey of Int. Affairs*, 1930 (London, 1931). 407–418.

[62] Other articles amended by Council, Oct. 5, 1927; plebiscite, Jan. 10–11, 1928. *Consts. Vigs.* (Altamira, Madrid, 1926), II, 157. *Code Civil d'Haiti* (Léger, Port-au-Prince, 1931), 7. 112 *British and Foreign State Papers* 1113.

In accordance with the new "good neighbor" policy,[63] the United States marines were withdrawn on August 15, 1934.[64] The tenth constitution of May 16, 1935,[65] ratified by a plebiscite on June 2, 1935,[66] provided:

Art. 1. Haiti is an independent State in which the sovereign power resides in the people. Its territory and the islands which depend on it are inviolable and cannot be alienated by any treaty or by any convention. These islands are: Gonave, Tortue, Île-à-Vaches, Cayemittes, Navase, Grande Caye.

Art. 8. The right to own immovable property is granted to the foreigner residing in Haiti and to companies formed by foreigners only for the needs of their residences, and of their agricultural, commercial and industrial enterprises or for their teaching establishments, legally authorized. This right shall end in a period of one year after the stranger shall have ceased to reside in the country or the companies shall have ceased operations, in accordance with the law which determines equally the rules to be followed for the transfer and the liquidation of property.

In October 1937 Michael Francis Doyle, a Philadelphia lawyer who had represented several organizations which had opposed the occupation by United States marines in 1915, was decorated with the Haitian Order of Merit.

United States control of Haitian finances continued, and in July 1938 Sidney de la Rue, the United States receiver, arranged for financial assistance from the United States, though not in the form of a direct loan. A note for $5,000,000 was given by the Haitian government to the J. G. White Engineering Company, engaged in large public works in the republic, and was discounted at par by the Export-Import Bank, a United States government agency. Haiti proclaimed her neutrality in the Hitler war on September 16, 1939.

Boundary

Following the peace of Ryswick in 1697 which left France with the western third of the island and Spain with the rest, there was constantly increasing tension between the inhabitants of the two parts and frequent disputes and affrays along the border and the shores, to the annoyance of both European courts. Under orders to secure the best harmony possible José Solano, captain-general of the Spanish part, and the Marquis de Valiere, governor of the French part, signed a provisional convention on August 25, 1773; but this, not meeting with the approval of either Charles III or Louis XV, Governor Solano and the Count d'Ennery, governor of the French Windward Islands, signed another agreement on February 29, 1776, which arranged for a commission of engineers to draw up a map of the whole frontier from north to south, and mark it with the necessary

[63] Ernest Gruening, "The Issue in Haiti," *For. Aff.*, XI (1933), 279; XII (1934), 677. Ernest Gruening, "Haiti for the Haitians," *Current History*, XL (1934), 418.

[64] Accord of Aug. 7, 1933. *U. S. Exec. Agreement Ser.*, No. 46. *Rev. de Der. Int.* (Paris, 1938), XXI, 384. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXVIII (1934), 46. Accord of July 24, 1934. *U. S. Exec. Agreement Ser.*, No. 68. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXX (1935), 135.

[65] *Const. de la Rep. d'Haiti* (Port-au-Prince, 1935).

[66] *Bull. des Lois et Actes*, 1935 (Port-au-Prince, 1936), 233.

posts, which they did, signing their report on August 28, 1776. Upon these preliminaries, the sovereigns agreed to settle the permanent boundary of their respective possessions, and accordingly José Moñino, Count of Florida Blanca, for Spain and the Marquis of Ossun for France, signed at Aranjuez on June 3, 1777,[67] a boundary treaty which provided:

Art. 1. The perpetual and unvariable boundaries between the two nations shall be the mouth of the Daxabón or Massacre river on the north of said island, and on the south, the mouth of the Pedernales or Anses á Pitre river, as specified in the following article; only noting that if in future times there shall occur any doubt as to whether or not the Pedernales and the Anses á Pitre are one and the same river, it is now established that the frontier line is that which goes along that which the Spaniards today popularly call the Pedernales river.

Art. 2. [The instrument signed by the engineers on Aug. 28, 1776, is made part of this treaty, at full length, with a detailed description of each course, the adjoining private landowners and the location of each of 221 stone pyramids, some of them too inaccessible to be actually placed; summarized as: from the mouth of the Daxabón or Massacre river up to its source; thence westward by the crests of the chain of the Jatiel or Noires Mountains to the right bank of the Artibonito river near Artibonito mountain or Montagne-á-Tonnerre, thence towards the southeast across the eastern part of Azuey Lake or the Étang san Mártre; and thence by the Pedernales or Anses-á-Pitre river from its source to its mouth.]

Art. 4. To avoid in the future any sort of difficulty over the use of the waters of the Daxabón or Massacre river . . . [either Commander may inspect on the other shore and destroy any constructions which impede the free course of the stream in its natural state, except on either bank dikes necessary to restrain floods].

Art. 8. [The troops of either may on notice cross the possessions of the other by the usual routes where necessary, for their purposes.]

This detailed description of the line seemed to quiet the frontier disturbances somewhat; and in the rapidly ensuing changes of sovereignty, revolts, and political manoeuvers for the next hundred years, there was little time for attention to such minor matters as the boundary. In 1844, when the Haitians withdrew from Santo Domingo, notwithstanding the 1776 survey the line was still not clearly defined, especially in the unsettled districts; and Haiti continued to press eastward on ever plausible occasion against Dominican governments or revolutionists and against Spain. Finally, even the persistent annexationists having become discouraged at the repeated failures to secure outside protection, the easterners began to consider direct agreement again with their neighbor. A preliminary convention of peace and friendship, signed at Santo Domingo on July 26, 1867,[68] ratified by the Dominican Republic but not by Haiti, provided:

Art. 7. A special treaty shall fix later the demarcation of the boundaries of the two States. Meanwhile they shall be maintained in their present possessions.

[67] *Trats. de España* (Cantillo, Madrid, 1843), 526.

[68] *Rec. de Tr. et Conv. de Haiti* (Léger, 1891), 114. Martens, *Nouv. Rec. Gén. de Traités*, XX (1875), 621; 2e Sér., XXVII (1902), 22. *Arch. Dipl.* (1868), II, 453.

In 1874 Dominican envoys arrived at Port-au-Prince to explore the possibility of lasting peace. After seven conferences, in which the Dominicans at first tried to confine the proper possessions of each state to the lines of the Treaty of Aranjuez and were flatly opposed by the Haitians, who insisted that that treaty had long lapsed for both sides, the easterners fell back on the *uti possidetis* of 1867, which the Haitians also rejected, since their troops in the civil wars of 1868–70 had occupied points further advanced, and finally the existing line of separation was all that could be agreed on. The treaty of peace which was signed at Port-au-Prince on November 9, 1874,[69] provided:

Art. 1. The Dominican Republic and the Republic of Haiti solemnly declare that they alone possess the sovereignty of the island of Santo Domingo or Haiti.

Art. 3. Both contracting parties . . . promise not to cede, encumber or alienate in favor of any foreign power the whole or any part of their territories or the adjacent islands which depend on them. Likewise they promise not to solicit or consent to any annexation or foreign domination.

Art. 4. The high contracting parties formally undertake to establish, in the manner most in conformity with equity and the reciprocal interests of the two peoples, the frontier lines which separate their actual possessions. This necessity shall be the object of a special treaty, for which purpose the two governments shall name commissioners as soon as possible.

Art. 8. The rivers which have their mouths in one of the two States and their source in the other and the lakes whose ownership is common to both parties shall be free in navigation.

Art. 12. As an evidence of the spirit of harmony and the fraternal sentiments which animate the two Governments, and which ought to strengthen more and more the bonds which unite the two peoples, the High Contracting Parties have decided that as soon as there can be measured, by statistics, the advantages which the Republic of Haiti receives from the freedom of commerce across its frontiers with those of the Dominican Republic, a return of customs duties shall be made for the latter's benefit, on the basis of the strictest equity.

From the same motives, if there is occasion for it in the future, as the two Republics may have prospered, the Government of Haiti reserves, according to statistics, the reciprocal privilege of claiming the same favor of a return of customs duties from the Dominican Republic.

Nevertheless, from ratification of the present Treaty, the Republic of Haiti will put at the disposal of the Dominican Republic the sum of 150,000 piastres in cash or bills of exchange on Europe or the Antilles, for the needs of the public service. This sum shall be paid by annual return payable in advance for 8 years, during which period statistical studies shall be made at the expense of the interested parties, for the purpose of fixing exactly the amount of such return; this without prejudice to the advances which may have been previously made by the Republic of Haiti to the Dominican Republic.

Art. 17. To strengthen the bonds which unite the two peoples and on the principle of reciprocity, the Haitian Government promises to present to the next legislature of its country a proposition of law by which native Dominicans may be allowed to acquire immovables in Haiti.

[69] Ratified by Haiti, Jan. 20, 1875. *Rec. de Tr. et Conv. de Haiti* (Léger, 1891), 119. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXVII (1902), 3. *U. S. For. Rel.*, 1873, I, 218–224; 1875, II, 682; 1877, p. 309; 1878, p. 406. 65 *British and Foreign State Papers* 235.

It was hoped on both sides that the bases for the demarcation of the boundary might now be considered definitely arranged, but an incident which reawoke doubts soon occurred. The Haitian chambers on October 9, 1876, after a successful revolution against the González dictatorship, passed an act declaring void all laws and decrees issued after May 14, 1874, as well as all contracts in which the interests of the State were manifestly injured. The Dominican Republic thought that the treaty of November 9, 1874, was assailed by this law, and somewhat as a test asked Haiti for the first installment of money due under Article 12, to which Haiti replied that the obligation to make advances did not arise until it was found who profited by the free transit across the frontier. The Dominican chargé d'affaires thereupon left Port-au-Prince, and by way of reprisal the Dominican Republic in its sixth constitution of 1876 restored the territorial article to its earlier form, calling for the boundaries of 1793 as stipulated in the treaty of 1777. Diplomatic relations were not restored for four years, when the Dominican Republic sent General Ulises Heureaux, minister of the interior, as a special delegate to Port-au-Prince, and he signed there on October 14, 1880,[70] a provisional convention which stipulated:

> Art. 2. The High Contracting Parties agree and undertake to study, discuss and adjust between them points susceptible of amelioration and modification, to arrive by the most suitable means at a definite accord to regulate henceforth their relations.

Conferences looking to a revision of the treaty of 1874 broke down on May 29, 1883, over the meaning of actual possessions in Article 4; the Haitians contending that the expression meant the territories which each effectively and by real jurisdiction possessed when the treaty was signed (in other words, a *uti possidetis* of 1874), while the Dominicans thought it meant, (1) the possessions to which each had a true right by legitimate titles, (2) those of the *status quo post bellum* in 1856, or (3) those which by law ought to belong to the two peoples. In 1887 the Dominican Republic proposed to Haiti new conferences on the basis of the *uti possidetis* of 1856, to which Haiti replied that the *uti possidetis* of 1874 was guaranteed to her in precise terms by the treaty of 1874. The presidents of the two republics met at Thomazeau on February 5, 1890,[71] and signed a protocol undertaking to resume negotiations for the geographic demarcation of the frontiers of the two countries. On December 18, 1894, the Haitian Legation in Santo Domingo requested the Dominican government to name commissioners, who, with those of Haiti, should under Article 4 of the treaty of 1874 proceed to bound the frontiers

[70] Ratified by Haiti, Oct. 24, 1882. *Rec. de Tr. et Conv. de Haiti* (Léger, 1891), 209. 78 *British and Foreign State Papers* 704.

[71] *Rec. de Tr. et Conv. de Haiti* (Léger, 1891), 264. *Memorandum, Cuestión de Límites* (Santo Domingo, 1891). Dalbémar Jean Joseph, *La Question Dominicaine, Nos Limites Frontières* (Port-au-Prince, 1893).

which separated the possessions of the two states at the time of the signature of that treaty. To this the Dominican government answered that it would name its commissioners if Haiti would consent provisionally to the *uti possidetis* of 1856 as the basis for the boundary, substantially as proposed in 1883 and in 1887, and suggesting arbitration of any final disagreement. Haiti again insisted on the treaty and *uti possidetis* of 1874, said that there was no need of arbitration, and that after the treaty of 1874 had been executed was time enough to discuss revising it. On May 1, 1895, however, a protocol was signed to serve as a basis for a convention of arbitration for the interpretation of Article 4 of the treaty of 1874; if the interpretation were favorable to Haiti, the Dominican government was to trace the frontier so as to leave to Haiti all the possessions occupied by her in 1874; and if the interpretation were favorable to the Dominican Republic, Haiti should be left in possession of the territories she occupied in 1874, but she must pay compensation for them; so that in either event, whatever the decision, Haiti's territorial possessions remained those which she occupied in 1874. After a Dominican plebiscite on June 1–2, 1895, the arbitration convention was signed at Santo Domingo on July 3, 1895.[72] After reciting Article 4 of the Treaty of 1874 and the opposing positions of the two parties, it provided:

Art. 1. The difficulty which has arisen between the Haitian and the Dominican Governments on the subject of the interpretation of Article 4 of the Treaty of 1874 shall be submitted to the arbitration of His Holiness the Pope.

Art. 7. The high contracting parties agree to consider the result of the arbitration as a complete and final solution of the difficulty of interpretation above recited.

Art. 8. If the point is resolved in favor of the Haitian nation, the Dominican Government undertakes to trace the final frontier line in such manner as will leave to Haiti all possessions occupied by her in 1874.

Art. 9. If the Arbitrator decides the question according to the interpretation supported by the Dominican Government, then that Government, inasmuch as Haiti has always occupied and peopled the territory, in dispute for so long, . . . undertakes to agree with the Haitian Government . . . to leave Haiti in possession, with perfect title, of the territory occupied in 1874, against just pecuniary compensation.

The Dominican government, having heard that M. Delorme of the Haitian Legation in Rome by a note to Cardinal Rampolla on August 30, 1895, had asked the Pope not only to arbitrate upon the interpretation of the Treaty of 1874 but also to adjust in a general way everything relative to the frontier demarcation, ratified on September 3, 1895, the arbitration convention, with the addition of a

[72] Ratified by the Dominican Republic, Sept. 3, 1895; ratified by Haiti, July 18, 1895; ratifications exchanged at Santo Domingo, Sept. 3, 1895. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXIII (1898), 79; XXVII (1902), 12, 25. *Arch. Dipl.* (1896), LX, 243. *Rev. de dr. int. et lég. comp.* IV (1902), 626. *Int. Arbitrations* (Moore, 1898), V, 5018. A. Poujol (former chargé d'affaires of Haiti), "Le Differend entre Haiti et Saint Domingue." *Rev. gén. de dr. int. pub.*, VII (1900), 437.

conditional clause stating that both governments conferred on the Supreme Pontiff discretional power to decide, as arbitrator, not only the disputed interpretation of Article 4 of the Treaty of 1874 but, in general, all questions of fact and law which were connected with their difficulties with respect to the frontier boundaries. Ratifications were exchanged with this conditional clause understood to cover only a hypothetical case, and when the Haitian government on October 16 formally disavowed the intention to ask any broadening of the arbitration (although from subsequent developments M. Delorme's action would appear to have been wise), the conditional clause in the Dominican ratification became entirely ineffective. Arguments for the two states were prepared [73] without much evidentiary documentation, but Pope Leo XIII declined to act as arbitrator [74] with the statement that:

> In view of the ardent wishes of the Church that the two sister nations might find another means of coming to an understanding and of settling amicably the old difference which exposes them to the risks of grave conflicts, and regretting greatly that the dignity of the Holy See and the conviction of not fulfilling his whole desire for appeasement do not permit him to accept the arbitration restricted to the simple interpretation of Article 4 of the Treaty of 1874, the Holy Father finds himself obliged to decline the offer, unless the two governments, in common accord and with the sincere desire for peace, should decide to grant to the Arbitrator more extended powers.

The Haitian foreign secretary thereupon declared that the situation reverted to the *status quo ante compromissum*, but the two presidents met at Jacmel a little later and came to an understanding as to the basis for an agreement. On April 18, 1898, a new convention was signed, which put into force again the Convention of 1895, bestowed upon the arbitrator ample powers to resolve the entire question, and agreed that if the Pope should not render his decision within one year the difference should be amicably settled upon the terms that Haiti should keep the frontier of 1874 and the boundaries and appurtenances and should indemnify the Dominican Republic by paying $1,000,000, and the Dominican Republic should consider the question definitely settled and would return to the Haitian owners whose property had been confiscated in 1844, at the time of the separation, $300,000. It seemed to some as if everything were now really settled,[75] and when no decision had come from the Pope within a year (the Dominican Republic not even having sent a representative to Rome), commissioners were appointed by

[73] *Mémoire que La Légation Extraordinaire de la République Dominicaine a Rome presente a Sa Sainteté León XIII, Juge Arbitre* (Paris, 1896). *Arbitrage du Très Saint Père le Pope, Memoire de la République d'Haiti* (1896). *Arbitrage du Très Saint Père le Pope, Exposé Complémentaire de la République d'Haiti* (Rome, 1900).

[74] The Pope as Arbitrator: see Ireland, "The State of the City of the Vatican," *Amer. J. Int. Law*, XXVII (1933), 271 at 287.

[75] Manuel A. Machado, *La cuestión fronteriza domirico-haitiana* (La Vega, R.D., 1911). Joseph Justin, *Le Differend entre la République d'Haiti et la République Dominicaine* (Port-au-Prince, 1912).

both nations to mark the line. The Haitians proposed to start work at Anses-à-Pitre, as the most convenient meeting point. The Dominican commissioners, however, began to place the first marks at the mouth of the Anses-à-Pitre or Pedernales without any previous examination of the rights of each party, and the Haitians thereupon refused to continue operations. The two presidents met again, at the Mole St. Nicolas, on May 28, 1899,[76] and signed a convention agreeing that:

> Art. 1. Each government shall draw up by technical commissioners a map or plan of the frontiers which according to it existed at the date of the treaty of 1874. The two plans shall be exchanged and studied and discussed in case of disagreement between the parties to find some possible adjustment. In case none can be found the parties agree to submit the points of difference to the arbitration provided for in Article 7 of the Convention of July 3, 1895.

The maps were prepared and exchanged, but did not change the situation in any respect.

The two governments nearly came to blows over a conflict of jurisdiction on the river Massacre in 1901, but the difficulty was smoothed over and the states signed a new convention on June 17, 1901,[77] by which (Article 1) the northern frontier from the mouth of the river Massacre to the point where the two opposing theories ceased to be in accord (Article 2) was to be marked by special commissioners. The mixed commission went to work, and did its best to determine the respective jurisdictions in the region crossed by the Massacre River, setting up masonry pyramids from the mouth of the Massacre, in the Bay of Mancenille, as far as Dajabón-Ouanaminthe, at the confluence of the Massacre and the Capotille, but could go no further. In 1910 the Dominican government began to build a road between the eastern bank of the mouth of the river Pedernales and the Lake El Fundo or Azuey, and the Commune of Grand Gosier, claimed by the Haitians, was occupied by Dominican troops with the road builders. Commissioners from both sides went to the spot and drew up a statement of events. The United States undertook to calm the two nations,[78] and they finally agreed to refer the solution of their frontier question to the Permanent Court at The Hague. Delegates of both states were discussing and arranging in Washington the details of the protocol for arbitration when a revolution in Haiti in August 1911 threw General François Antoine Simon out of power, and the negotiations ended.[78a]

During the earlier part of its occupation of both countries, beginning in 1915, the United States wisely made no overt gestures toward adjustment of the thorny

[76] Moises García Mella, *La Cuestión Límites* (Santo Domingo, 1923).

[77] *U. S. For. Rel.*, 1906, I, 600–609.

[78] *U. S. For. Rel.*, 1911, pp. 151–167; 1912, pp. 368–371, 380–387; 1913, pp. 467–470.

[78a] *Revista Judicial* (Santo Domingo, 1912), VII, 211.

boundary question, but undoubtedly exerted steady pressure toward an agreement,[79] and the acting governments of the two nations signed a boundary treaty at Santo Domingo on January 21, 1929,[80] which provided:

Art. 1. The frontier line between the Dominican Republic and the Republic of Haiti starts from the thalweg of the mouth of the river Dajabon or Massacre, in the Atlantic Ocean [Bay of Mancenille, north of the island] and following the course of that river until opposite the town of Dajabon, according to the map, made in 1901 by the mixed Dominican-Haitian Commission, of the frontier line in the extreme north.

Subd. 2. From Dajabon, it follows the course of the river Dajabon or Massacre to its confluence with the river Capotille or Bernard, according to the studies of the said Commission, which are considered as annexed to the present treaty;

Subd. 3. From said confluence it follows then the course of the river Capotille or Bernard to its source, on Mount Citadel or Height of Las Palomas; from that point along the crest of the mountain chain northwestward to the point where it meets a mount covered with pines called Loma de los Pinos; along this last mount following its crest, to a plain [Loma Llana], whence it runs west to a bare peak; thence southwest to the summit of a mountain called Pan de Azúcar but commonly known in the locality as Mount Grimé; thence to the source of the river Libon; thence it follows the course of that river to the point where that river crosses the road called royal highway, which goes from Banica to Restauration [Gourabe], following that road to the point where it crosses the river Artibonite, opposite Banica. [Said royal highway passes to the west of Miel and to the east of Cerca-la-Source.] Where said frontier line follows the road, it shall be traced in the middle of said royal highway, which thus remains at the service of both States. From where the said road crosses the river Artibonite, opposite Banica, the frontier line follows [the Artibonite to its confluence with the river Macasia; the Macasia to San Pedros along the crest of the ridge in a straight line to Fort Cachimán; through the center of said Fort and bending toward the southeast, in a straight line to the river Carrizal; up that river to its source; in a straight line to Rancho de las Mujeres, leaving it to the east; in a straight line to Cañada Miguel; continuing southwest to the Río de los Indios at a well defined promontory; along that river to the road which leads to Gobert; along that road, leaving Gobert and Carrefour to the west and following the crest of the ridge in a straight line to the south-eastern peak called Loma de Fond Pitte (Bajada Grande); to Las Lajas following the middle of the royal highway which leads towards Haiti; to El Fondo, following the same road];

Subd. 4. From El Fondo to El Número the frontier line shall be that indicated [B–C–D–E] on the plan which, accepted by both parties and signed by Mm. Déjean and Troncoso de la Concha is annexed to this treaty, of which it forms a part.

Subd. 5. From El Número to Minguette; to Tempé; to Mare Citron; to Guasima; to the village of Bois Tombé; to Gros Mare or Gros Mat; to a gorge between Grande Savane and Sabana de Zumbi [formerly La Descubierta]; to the source of the river Pedernales [Cabeza

[79] *U. S. For. Rel.*, 1920, I, 295–311; 1921, pp. 228–231; 1922, I, 434–442; 1923, I, 356–362.

[80] Ratified by the Dominican Republic, Feb. 8, 1929; ratified by Haiti, Feb. 15, 1929; ratifications exchanged at Santo Domingo, April 29, 1929. *Bull. des Lois et Actes, 1929* (Port-au-Prince, 1929), 30. *League of Nations Treaty Series*, CV, 193. 130 *British and Foreign State Papers* 572. *Amer. J. Int. Law*, XXV (1931), 332. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXX (1935), 337.

de Caboguette]; along that river to the point where its water submerges; along the dry bed of the Pedernales to the point where the water reappears, between Cabeza de Agua and Tête-à-l'Eau; along the course of that river to opposite Spanish or Banana court; to the point where that crosses the present road [royal highway] leading to Anse-à-Pitres and Pedernales, through the pass called Cévart Pass; along the middle of said road about 2.8 miles to Glace Pass; from where the royal highway crosses the Pedernales along the course of that river to the thalweg of its mouth, in the Caribbean Sea, south of the island.

Art. 2. To determine with the necessary precision the division line thus described and to establish it on the ground with visible marks [every 1000 meters], there shall be formed a Commission of 6 members, 3 [appointed] by each Republic.

Art. 4. In case difficulties arise in tracing the line, as to which the parties cannot reach an agreement, a statement shall be drawn up and furnished to the two Governments.

Art. 5. To settle any difficulty which may arise in the Demarcation Commission, a mixed Commission of 5 members shall be formed [one chosen each by the President of the Dominican Republic, Haiti, United States of America, Brazil and Venezuela], [Article 8] to meet at Santo Domingo within 60 days, [Article 9] hear the questions, and [Article 10] decide by a majority of 3, [Article 11] such decisions to be final and unappealable.

Art. 16. Although there has never existed any controversy on the subject of ownership of the adjacent islands to be found in the neighborhood of the mouth of the river Dajabon or Massacre and of the river Pedernales, it remains fixed in the present treaty that the islands, islets and isles following; in the north,[81] Siete Hermanos and La Cabra, in the south,[82] La Beata, Alta Vela or Alto Velo and Los Frailes are and always have been under the sovereignty of the Dominican Republic.

Art. 17. [Both Governments release forever and finally all pecuniary claims.]

Art. 18. All difficulties of whatsoever nature between the two Governments concerning the present treaty shall be submitted to arbitration.

At the time of signing this treaty, the parties exchanged notes,[83] by which it was agreed that the waters of El Fondo Lake (Assuei) might continue to be used by the inhabitants and animals of the Dominican region near the lake without diminishing at all the sovereignty of Haiti over the whole lake. This treaty seemed to give to Haiti a little more territory than any of the previous attempted agreements, but the Dominican Republic approved it, with the aclaratory additions. The two governments signed at Santo Domingo on February 20, 1929,[84] an arbitration treaty by which:

Art. 2. The High Contracting Parties undertake not to erect on their respective territories, within a limit of 10 kilometers from the frontier line agreed upon and traced in accordance with the Treaty of Jan. 21, 1929, any fortification or other military works. [Police barracks and buildings are not to be deemed military works.]

Art. 10. In view of the fact that rivers and streams rise in the territory of one of the two

[81] Northwest of Monte Cristi.

[82] Southwest of Cape Beata.

[83] *Mem. de Rels. Exts. corr. á 1931* (Santo Domingo, 1932), 61.

[84] See Chap. III, Sec. 19, *infra*. 130 *British and Foreign State Papers* 580. *League of Nations Treaty Series*, CV, 215. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXVIII (1934), 701.

States and flow through the territory of the other or serve as boundaries between them, the two High Contracting Parties undertake not to carry out or be a party to any constructional work calculated to change their natural course or to affect the water derived from their sources. [This is not to deprive either State of the right to make just and equitable use, within its territory, of said rivers and streams for irrigation of the land or for other agricultural and industrial purposes.]

The demarcation commission was duly appointed and went to work, and during 1930 succeeded in marking by common agreement the frontier line for over 80 per cent of its length from sea to sea. In five places disagreements appeared, which the commission was unable to resolve. Work was suspended on October 28, 1930, and marks destroyed by floods in the Artibonito River were not replaced.[85]

Presidents Rafael L. Trujillo Molina of the Dominican Republic and Stenio Vincent of Haiti met on October 18, 1933, and in the cities of Dajabón and Ouanaminthe held personal conferences seeking an end to the frontier demarcation difficulties. On February 27, 1935,[86] they signed at Santo Domingo an agreement resolving the five points of difference left by the demarcation commission as follows:

First. To fix as source or head of the river Libón the point where the rivers Marigoyenne and Tenebras unite to form thence downstream the river Libón. The frontier, consequently, shall go in a straight line from the marker No. 48 on Mont Grimé to said point.

Second. The course of the frontier from transit station No. 805 on the road from Restauración to Bánica to the river Artibonito was settled by the Miel protocol.

Third. From the point SP4 marked by the Demarcation Commission at San Pedro on the river Macasías the line shall follow the ridge of the hills, descending to Tumba la Rosa, passing by Dame Jeanne Cassée and by the cemetery established at Fort Cachimán; thence to the river Carrizal, leaving the royal highway in Haitian territory; up the waters of the river Carrizal to its head.

Fourth. From the head of the Carrizal to Mare Zephir [Rancho de las Mujeres] passing Maison Madame Salomón; thence to Cañada Miguel.

Fifth. The line shall run from Gros Mare to the well-defined ravine at Mare Orange; thence to Bonite spring, head of the river Pedernales, the intermediate points to be located later.

The Governments have considered the desirability of correcting the 1929 line in the sector between the point on the royal highway which goes from Bánica to Restauración and crosses the river Libón at Passe Maguanne and the point at which that road crosses the river Artibonito opposite the town of Bánica, without such correction affecting in the least the freedom of transit which the Treaty of Jan. 21, 1929 gives the Dominicans in such sector; and it is agreed to sign an additional protocol for the establishment of the line between said points when the engineers of both Governments shall have made a technical report as to such road.

[85] 130 *British and Foreign State Papers* 579.

[86] *Gac. Of.*, Año LVI, Num. 4773 (Santo Domingo, March 9, 1935).

The demarcation commission was reconstituted,[87] and on June 2, 1935, began marking the sections of the line thus newly settled. Presidents Trujillo and Vincent signed at Port-au-Prince on March 9, 1936,[88] a protocol of revision of the treaty of January 21, 1929, which provided:

Art. 1. The Dominican Republic consents to the revision of Paragraph 2 of Article 1 of the Treaty of Jan. 21, 1929 [to read]: a line from Passe Maguane or the point marked 22 R.L. following the axis of the river Libón to the pass called Tilorí; thence the line shall follow the axis of a highway belonging to the two states to begin at the Pass of Tilorí or Madame Luchen, along the right bank of the river Libón, past Juan de Paz, then crossing the stream Los Algodones, across the stream La Guárana, along the right bank of that stream, across La Mechora plain, past Cocoi, along the skirts of Las Guáranas, past Hatillo, La Tasajera, La Baria, La Diablesa and Los Carraos to El Corte [Le Cour].

From El Corte [Le Cour] the highway shall follow the existing road for a distance of 1500 meters towards Guayacán, thence the highway shall be constructed parallel to the course of the river Artibonito at a maximum distance of from 800 to 1000 meters; thence through the crossroads called Fundo Viejo [Croix Vieux Fond], crossing the stream La Salle, then the brook called Cañada Bonita and on to the pass called Los Cacaos, where it crosses the river Artibonito. At this place shall be built the International Bridge of Artibonito. From said International Bridge the frontier line shall follow the axis of the river Artibonito to opposite the town of Bánica, whence it shall continue along the axis of the river Artibonito, in accordance with the boundary fixed in 1929.

Art. 3. The international highway shall be constructed by the two States, each to pay 50% of its total cost, of materials, labor, machinery, etc. The repair and maintenance of the highway shall be at the expense of the two contracting States.

Art. 4. [It shall be a macadam road, 5 meters wide.]

Art. 5. Haiti declares and the Dominican Republic agrees that the axis of the international highway to be constructed by the two States is the fixed boundary between the two Republics.

Art. 6. The waters of the rivers Libón and Artibonito belong in equal parts to the two adjoining States and their use is subject to the provisions of Article 10 of the Treaty of Feb. 20, 1929.

Art. 7. [Work on the highway shall begin 90 days from ratification of the present protocol, and be finished, including the bridges, in 2 years.]

Art. 8. The Dominican Republic accepts the revision of Paragraph 3 of Article 1 of the Treaty of Jan. 21, 1929 [to read]: thence through the center of Fort Cachimán and bending toward the southeast and at 15 meters from the axis, it follows a line parallel to the present royal highway which goes to Comendador, leaving that highway in Haitian territory, till it reaches the stream Carrizal.

[87] For the Dominican Republic: Moises García Mella, Casimiro Gómez and Manuel S. Gautier. For Haiti: Elie Lescot, Louis Roy and Gentil Tippenhauer. Decr. Pres., May 4, 1935. *Gac. Of.*, Año LVI, Num. 4787 (Santo Domingo, April 20, 1935). *Bull. des Lois et Actes* (1935), 180.

[88] Ratified by Dominican Republic, March 27, 1936; ratified by Haiti, March 23, 1936; ratifications exchanged at Ciudad Trujillo, April 14, 1936. *Gac. Of.*, Año LVII, Num. 4890 (Ciudad Trujillo, April 1, 1936); Num. 4917 (June 25, 1936).

In October 1937 rioting broke out in several Dominican border towns against a heavy immigration of Haitian laborers, with subsequent charges that Dominican police and soldiers had been involved, and before the disturbances were suppressed from three hundred to twelve thousand Haitians were said to have been killed. Feeling between the republics grew tense, and serious trouble apparently was averted by friendly gestures of Presidents Vincent and Trujillo. On November 12, 1937, Haiti requested mediation, and in December, Cuba, Mexico, and the United States made a tender of good offices. Conciliation procedure under the Gondra Treaty of 1923 [89] and the general Inter-American Conciliation Convention of 1929 [90] was accepted by the Dominican Republic, and a treaty signed at Washington on January 31, 1938,[91] provided (Article 3) for the payment by the Dominican Republic to Haiti of $750,000 as full indemnity for all damages. The sum of $250,000 was paid down on February 28, 1938, as agreed (Article 8, 1), but the first of the five annual installments of $100,000 to cover the remainder was not paid on January 31, 1939, when due (Article 8, 2); only because of an accidental omission in their budget, the Dominican government said. By an agreement of compromise of February 16, 1939,[92] all the remaining payments were commuted for a cash sum of $275,000, which was then paid by the Dominican Republic.

This boundary line, but a hundred and seventy-one miles long, has given persistent difficulty to the two diverse nations forced to be neighbors on the same island: one largely white, speaking Spanish; the other chiefly negro, speaking Creole; with little in common except climate and religion. A long early struggle for domination was succeeded by intermittent diplomatic negotiations, frequently terminated by riot and revolution on one side or the other; two *prima facie* attempts to arrange an arbitration were weak and futile; and only by piecemeal actual marking on the ground have the sister states reached final agreement. It has been demonstrated that stone markers do not prevent severe frontier clashes; but with a definite agreement for the entire line it may be hoped that the conflicts will gradually die out, and the neighbors be able to live peaceably together.

[89] See Chap. III, Sec. 150, *infra*.

[90] See Chap. III, Sec. 154. *infra*.

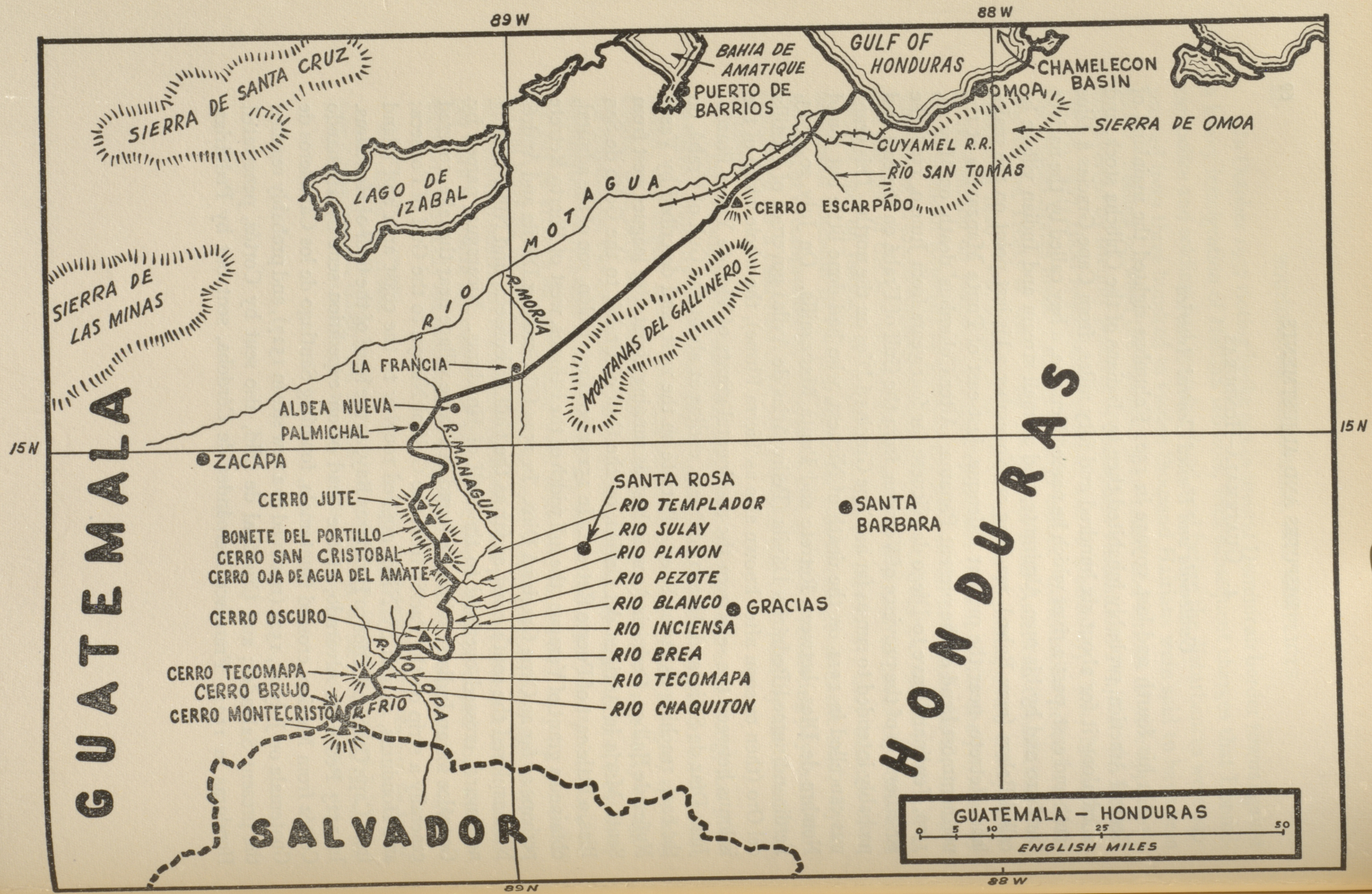
[91] Ratifications exchanged at Port-au-Prince, Feb. 26, 1938. *League of Nations Treaty Series*, CLXXXVII, 169. Decr. Ejec. 2140 bis. *Gac. Of.* (1938), Año LIX, Num. 5136. Decr. Ejec. 2201. *Gac. Of.* (1938), Año LIX, Num. 5137. Res. Leg. 101. *Gac. Of.* (1939), Año LX, Num. 5302. *Rev. de Der. Int.* (Paris, 1938), XXI, 232. *Current History* (Jan. 1938), XLVIII, 31.

[92] Res. Leg. 82. *Gac. Of.* (1939), Año LX, Num. 5285. Decr. Ejec. 435. *Gac. Of.* (1939). Año LX, Num. 5380.

4. Guatemala–Honduras

Guatemala and United Central America

On his fourth and last voyage in 1502 Columbus sighted the mainland of Central America, probably inhabited then by Indians of the Chibcha stock, and sailed along it for about six hundred and fifty miles, from Cape Gracias á Dios south and east, past a river which he named Veragua, a bay called by the natives Zarabaro and by his men Almirante, and a small stream and Indian village he called Belem (now Belen), reaching on November 2 his last point on the mainland, Retrete, near the present Palenque, just east of Punta Manzanilla at the northernmost bend of the present Panama. After Columbus' death, on May 20, 1506, Ferdinand gave to Diego de Nicuesa for four years from June 9, 1508, the governorship of the province of Veragua, from the Gulf of Urabá on the east and probably intended to run as far as Cape Gracias á Dios on the north. This grant was cancelled in 1511 on the death of Nicuesa, who had done little but found Nombre de Dios, between Retrete and Punta Manzanilla. On July 20, 1513, Ferdinand named Pedrárias Dávila (Pedro Arias de Avila) governor of Castilla del Oro (then or soon after known also as Tierra Firme), the whole width of the isthmus between the seas from the continental grants of Vicente Yañez Pinzón, Juan Díaz de Solis, and Alonso de Ojeda, ending at about the Gulf of Urabá, on the east, reaching as far as Puerto Retrete on the west, and described by Vasco Nuñez de Balboa, Pedrárias' son-in-law, as running about fifty leagues west from Santa María la Antigua del Darién, on the Gulf of Urabá, to the Golfo de San Blas, a little east of Puerto Retrete. In 1513 also Diego Colón, son of the admiral, obtained a grant of Veragua, the full width of the isthmus, west of Puerto Retrete perhaps as far as Cape Gracias á Dios. In 1522 Gil González Dávila and Andrés Niño explored the south coast as far as the Gulf of Fonseca, and Niño, turning northward, crossed overland to the Gulf of Honduras. Nicaragua, named by González for an Indian cacique he found in a large village near the lake, covered generally a strip on the Pacific from the Gulf of Nicoya to the Gulf of Fonseca; and Honduras, named by Niño, applied roughly to the coast area and inland from Cape Gracias á Dios to Honduras Bay, at the head of the Gulf of Honduras. In 1523 Pedro de Alvarado, at the head of an expedition sent by Hernando Cortéz from Mexico, crossed Guatemala, founding Santiago de los Caballeros de Guatemala on July 25, 1524 (removed to a new site in 1527), and probably reached the present Salvador; and Cristóbal de Olid, also sent by Cortéz, penetrated Honduras in 1524. Francisco Hernández de Córdoba, sent out by Pedrárias,


89 W
88 W
15 N
89 N
88 W
SIERRA DE SANTA CRUZ
BAHIA DE AMATIQUE
PUERTO DE BARRIOS
GULF OF HONDURAS
CHAMELECON BASIN
OMOA
SIERRA DE OMOA
CUYAMEL R.R.
RIO SAN TOMAS
CERRO ESCARPADO
LAGO DE IZABAL
RIO MOTAGUA
SIERRA DE LAS MINAS
RIO R. MORJA
MONTANAS DEL GALLINERO
LA FRANCIA
ALDEA NUEVA
PALMICHAL
R. MANAGUA
ZACAPA
CERRO JUTE
BONETE DEL PORTILLO
CERRO SAN CRISTOBAL
CERRO OJA DE AGUA DEL AMATE
CERRO OSCURO
CERRO TECOMAPA
CERRO BRUJO
CERRO MONTECRISTO
R. FRIO
R. LOLOPA
SANTA ROSA
RIO TEMPLADOR
RIO SULAY
RIO PLAYON
RIO PEZOTE
RIO BLANCO
RIO INCIENSA
RIO BREA
RIO TECOMAPA
RIO CHAQUITON
SANTA BARBARA
GRACIAS
GUATEMALA
HONDURAS
SALVADOR
GUATEMALA – HONDURAS
0 5 10 25 50
ENGLISH MILES

explored further in Nicaragua in 1524, founding Granada (on Lake Nicaragua) and León, and being stopped by González from entering Honduras; but in 1525 Hernández rebelled against Pedrárias, who came up unexpectedly, captured him in León, and executed him in 1526.

On November 20, 1525, Charles I named Diego López de Salcedo governor of the province and Gulf of Las Higueras, this being the beginning of the Spanish province of Honduras. Pedrárias continued on into Honduras and visited the district called Nequepio (the present Salvador), but was stopped by Hernando de Saavedra, acting governor of Honduras, and retired to Castilla del Oro without leaving any new settlement. On June 1, 1527, Pedrárias was made governor of the province of Nicaragua, whether as reward or punishment is not clear, with no definite limits set to his territory except that his jurisdiction was not to overlap that of the government of Tierra Firme, so that his new territory probably met his former province of Castilla del Oro on the east. Pedrárias, the first of several governors of Nicaragua to seek an outlet to the north or Caribbean Sea, on January 25, 1529, petitioned Charles I to extend his province to include both Honduras and Salvador, but was refused. He explored the river San Juan from Lake Nicaragua to its mouth, and was probably preparing some scheme for including that region in Nicaragua when he died in March 1531 at the age of ninety. His successor in Nicaragua, Francisco Castañeda, also sought without success royal permission to obtain a port on the Atlantic. On March 4, 1534, Charles I named Rodrigo de Contreras governor of the province of Nicaragua, and on December 24, 1534, he named Felipe Gutiérrez governor of the province of Veragua, to extend from the government of Castilla del Oro, called also Tierra Firme, to Cape Gracias á Dios.

On January 19, 1537, the Duchy (Ducado) of Veragua was created for Luis Colón, grandson of the admiral, to consist of a parcel twenty-five leagues square in the province of Veragua from the river Belen westward as far as necessary towards Caravara Bay (Chiriquí Lagoon) and from sea to sea (being less than twenty-five leagues across); and the rest of the former province of Veragua was annexed to the government of Tierra Firme (though separated from it by the new duchy). On March 2, 1537, Charles I annulled the 1534 grant of the province of Veragua to Felipe Gutiérrez, for abandonment. On March 25, 1540, the Cabildo of León in Nicaragua sought to found and maintain a port on the Atlantic, but royal permission was refused. On November 29, 1540, Charles I named Diego Gutiérrez (probably a brother of Felipe) governor of the province of Nuevo Cartago, being the part of the former province of Veragua west from the duchy of Veragua, as far as the Río Grande west of Cape Camarón, but not to go within

fifteen leagues of Lake Nicaragua, which was to remain in the government of Nicaragua, with navigation and fishing in the lake and its outflowing river to be in common. About this time the area between Capes Gracias á Dios and Camarón inland, up the Segovia and Patuco and beyond, began to be called Taguzgalpa. On January 11, 1541, Charles I warned Hernán Sánchez de Badajoz that an exploration and settlement contract he had made with the audiencia of Panama gave him no right to invade the province of Veragua or Cartago. The city of Santiago de Guatemala, with its surrounding territory in the viceroyalty of New Spain, was at first subject to the audiencia of Mexico City, but on September 13, 1543,[1] a separate audiencia was created for Santiago de Guatemala, remaining subordinate to the viceroy at Mexico City. The Franciscan and Recollet missionaries were active in exploration and settlement in Guatemala, and the Franciscans in Honduras. In 1544 Diego Gutiérrez was killed in a battle with Indians at Tayutic, five leagues from Cartago. On May 9, 1545, there was created a bishopric of Costa Rica, uniting the former bishoprics of Cartago and Nicaragua. On October 30, 1547, the king prohibited an expedition being sent from Nueva Segovia in Nicaragua to conquer and settle Taguzgalpa. On February 22, 1549, Charles I, on the nomination of Pedro Gutiérrez de Ayala, as heir of his father Diego Gutiérrez, named Juan Perez de Cabrera governor of Veragua or Cartago, but the audiencia of Guatemala opposed him, and he was made governor of Honduras instead. This appointment seems to have been considered to exhaust the Gutiérrez rights in the province of Veragua or Cartago, and the governorship remained vacant until 1559. On February 23, 1560, Philip II gave a commission to Lic. Alonso Ortiz Delgueta, Alcalde Mayor of the province of Nicaragua, to settle the interior land between Nicaragua and the Desaguadero and the cities of Nombre de Dios and Panama, from the north to the south seas, which, with a confirmatory grant on December 16, 1562, appears to mark the beginning of royal recognition of the province of Costa Rica. Delgueta was a little later governor of the province of Honduras, and on December 1, 1573, Philip II granted to Diego de Artieda Cherinos the right to pacify and settle the province of Costa Rica and other lands and provinces included in it, from the north to the south seas and from the Gulf of Nicoya to near the valleys of Chiriquí in the province of Veragua and the mouth of the Desaguadero on the north. On February 10, 1576, the audiencia of Guatemala gave Diego López a contract to conquer and settle the province of La Taguzgalpa or Nuevo Cartago, from the mouth of the Desa-

[1] Jurisdiction at first ove 1all Central America: Costa Rica, Chiapas, Guatemala, Honduras, Nicaragua, Panama, Tabasco, Veragua, and Yucatan. Abolished in 1563; reconstituted Feb. 5, 1570. Defined in 1573 as having jurisdiction over the Provinces of Costa Rica, Chiapas, Guatemala, Honduras, Nicaragua, Soconusco, and Verapaz. *Recopilación de las Indias*, Libro II, Titulo XV, Ley 6. 38 *British and Foreign State Papers* 665.

guadero north to Camarón Point, where the province of Honduras commenced, and inland to meet the jurisdictions of Honduras and of Nicaragua and Nueva Segovia. This contract was approved by royal cédula of Philip II on December 4, 1576. In 1608 Guerra de Ayala, governor of Honduras, asked Philip III for a capitulation authorizing him to conquer Taguzgalpa. About 1650 the eastern or coast part of Taguzgalpa began to be called Mosquitia.

In 1704, 1707, and 1710, invasions of Indians and English from Honduras and the coast reached Nueva Segovia and Amatique in Nicaragua. On August 23, 1745, Philip V named Colonel Juan de Vera governor of the province of Honduras from the end of the jurisdiction of Yucatan to Cape Gracias á Dios and named Brigadier Alonso Fernández de Heredia governor of the province of Nicaragua, including the territories and coasts from Cape Gracias á Dios to the Chagres River, exclusive (thus including Costa Rica and the western part of present Panama). A cédula of Ferdinand VI on January 30, 1747, subordinated the military authority of these two governors to that of Francisco Cagigal de la Vega, governor of Guatemala. The region south of the Isthmus of Tehuantepec was made the captaincy-general of Guatemala,[2] and about 1790 the captaincy-general was divided into the four intendencies of Chiapas, Honduras, Nicaragua, and Salvador. On July 24, 1791,[3] Charles IV by cédula approved the incorporation of the Alcaldia Mayor of Tegucigalpa, with all the territory of its bishopric except the port of San Fernando de Omoa, in the intendency of Comayagua.

On September 15, 1821,[4] a provisional junta in Guatemala City, joined at once by the province of Chiapas, declared in favor of independence from Spain, and, following a military expedition sent south by Iturbide, he was proclaimed Emperor, as Agustín I, of the principal Central American towns and cities. With the downfall of Iturbide in March 1823, General Filisola, in command in Central America, in partial anticipation of General Simón Bolívar's idea of a general conference at Panama,[5] called an assembly, and elected delegates met at Guatemala City on June 24, 1823. The province of Chiapas had been incorporated in Mexico and was not represented. The Assembly declared on July 1, 1823,[6] that the other provinces of the former captaincy-general of Guatemala were free and

[2] *Disp. Compl. de las Leyes de Indias* (Madrid, 1930), II, 232.

[3] *Alegato de Guatemala, Anexos* (Washington, 1932), 332; *Annexes, ibid.*, 350.

[4] *Leyes Vigs. de Guatemala* (Guatemala City, 1927), 3. 9 *British and Foreign State Papers* 854. "La Anexión de Centro América a Mexico," *Arch. Hist. Dipl. Mex.* (Mexico City, 1924), Num. 11, I; (1928), Num. 24, II; (1936), Num. 40, III.

[5] *American State Papers*, Class I, *For. Rel.* (Washington, 1858), V, 834–905, 916–920; (1859), VI, 383, 554. 12 *British and Foreign State Papers* 890; 13 *ibid.* 359, 978; 15 *ibid.* 832. Martens, *Nouv. Rec. Gén. de Traités* (1828, I), VI, 786. *Dipl. Corr. U. S., Ind. of Latin-American Nations* (Manning, Washington, 1925), II, 1298–1303. *Rec. des Cours* (1924, IV), V, 310; (1925, III), VIII, 228; (1930, I), XXXII, 472. *Amer. Secs. of State* (N. Y., 1928), IV, 137–155. *Rev. de Der. Int.* (Habana, 1926), X, 62–113.

[6] *Leyes Vigs. de Guatemala* (Guatemala City, 1927), 4. 11 *British and Foreign State Papers* 874. Edward Schuster, *Guide to Law and Legal Literature of Central American Republics* (New York, 1937), App. 139.

independent states, separate from Mexico and confederated into a nation called the United Provinces of Central America. Mexico acknowledged the independence of the United Provinces on August 20, 1823, and in October 1823 the deputies from Central America (except Chiapas) withdrew from the Mexican Congress. The first constitution of the Federal Republic of Central America, modelled on that of the United States of North America,[7] which was promulgated on November 22, 1824,[8] provided:

> Art. 5. The territory of the Republic is that which formerly composed the ancient Kingdom of Guatemala, with the exception, for the present, of the Province of Chiapas.
>
> Art. 6. The Confederation is at present composed of 5 States, which are: Costarrica, Nicaragua, Honduras, El Salvador and Guatemala. The Province of Chiapas shall be considered a State when it unites itself freely to the Confederation.
>
> Art. 7. The demarcation of the territory of the States shall be made by a constitutional law, when the necessary information shall have been obtained.

By Article 7 the Federal Congress was given power to fix definitely the boundaries of each state, but nothing effective was done. In 1824 the federation was launched and its diplomats made treaties with Colombia on March 15, 1825,[9] with the United States on December 5, 1825,[10] and with other nations. Manuel José Arce was chosen president and opened Congress on March 1, 1826.[11] Immediately dissensions and jealousies arose between the provinces, followed by the fall of Guatemala City in 1829, long civil war, and Indian risings. The Federal Congress by resolution of May 30, 1838, declared the states free to organize according to their own wishes, and in July 1848 proclaimed the dissolution of the Federation. In January 1848, Mosquito Indians from British Honduras, with British support, seized San Juan del Norte (Greytown), but soon withdrew.

Rafael Carrera became president of Guatemala, December 11, 1844, declared it an independent state on March 21, 1847,[12] and as dictator until his death on April 14, 1865, declined to join any of the further attempts at Central American union. The second constitution which was adopted on October 19, 1851,[13] included no description of the territory of the Republic. Guatemala, Honduras, and Salvador signed at Guatemala City on July 18, 1856,[14] a convention of league and alliance against adventurers, agreeing to intervene in Nicaragua in support of Patricio Rivas, who had just put William Walker out, and to invite Costa Rica to join them.

[7] Bases, Dec. 17, 1823. 12 *British and Foreign State Papers* 867.

[8] *Col. de Consts. Pols. de Honduras* (Vallejo, New York, 1878), 9. *Dig. Const'l de Honduras* 1824–1921 (Tegucigalpa, 1923), 13. 13 *British and Foreign State Papers* 725.

[9] 12 *British and Foreign State Papers* 802; 13 *ibid.* 1030; 14 *ibid.* 1097. Martens, *Nouv. Rec. Gén. de Traités* (1828, I), VI, 696.

[10] 13 *British and Foreign State Papers* 838. Martens, *Nouv. Rec. Gén. de Traités* (1828, I), VI, 826. Martens, *Rec. Man et Prat. de Tr.* (1846), III, 645.

[11] 13 *British and Foreign State Papers* 1016.

[12] *Gac. Of.* (Guatemala, 1847), II, 239.

[13] *Gac. de Guatemala* (Guatemala City, 1851), V, Num. 70.

[14] 46 *British and Foreign State Papers* 1298.

Costa Rica, Guatemala, Mexico, and Salvador, with New Granada, Peru, and Venezuela, signed at Washington on November 9, 1856,[15] a convention of alliance and confederation which was not ratified. Spain acknowledged Guatemala's independence by a treaty signed at Madrid May 29, 1863,[16] in which Isabella II recognized,

> Art. 1. . . . as a free, sovereign and independent nation the Republic of Guatemala, composed of all the provinces mentioned in its current Constitution, and of the other territories which legitimately belong or in the future may belong to it; [and renounced] . . . the sovereignty, rights and interests which belong to her over the territory of the said Republic.

Gerardo Barrios attempted to seize power in Central America, but his plans were discovered and defeated and when Costa Rica received him, after Guatemala, Honduras, Nicaragua, and Salvador had asked her not to, Guatemala, Nicaragua, and Salvador in January 1865 [17] suspended all relations with Costa Rica. A pact of Central American union was signed at the "City of Central American Union" (San Salvador) on February 17, 1872,[18] by Costa Rica, Guatemala, Honduras, and Salvador. On August 26, 1873,[19] Guatemala, Nicaragua, and Salvador signed at Managua a treaty of (defensive) alliance against the administration of Costa Rica, which they felt convinced was hostile to the peace of Central America, providing:

> Art. 7. The Republic of Guatemala and Salvador undertake that, as soon as there is a change in the present situation of Costa Rica, they will take the initiative in order to effect a settlement of the boundary question pending between Nicaragua and that Republic in a friendly manner, and on the terms most suitable for the interests of both nations; and if this should not be possible, to have the said question settled by means of arbitration, as already agreed between the two countries, as soon as feasible, so that the existing inconvenience may be put an end to.

Costa Rica and Guatemala signed at Guatemala City on July 20, 1876, a treaty of peace and friendship to which Salvador a little later adhered. Under the presidency of Justo Rufino Barrios, a liberal third constitution was adopted for Guatemala on December 12, 1879,[20] providing that:

> Art. 1. Guatemala is a free, sovereign and independent nation.
>
> Art. 2. [Guatemala] will maintain and cultivate intimate domestic and reciprocal relations with the other Republics of Central America; and whenever there shall be proposed a

[15] *Col. de Trats. del Salvador* (San Salvador, 1884), 57, 296, 337.

[16] *Trats. de España* (Janer, Madrid, 1869), 321.

[17] 58 *British and Foreign State Papers* 605, 606.

[18] Not ratified. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 17. *Col. de Trats. del Salvador* (San Salvador, 1884), 57. *U. S. For. Rel.*, 1872, pp. 519–523. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., III (1878), 476.

[19] *U. S. For. Rel.*, 1874, pp. 111–124. 63 *British and Foreign State Papers* 849. *Col. de Trats. de Guatemala* (Guatemala City, 1892), I, 432.

[20] Amended Oct. 23, 1885 (repealed), Nov. 5, 1887, Aug. 30, 1897, July 14, 1903 and Dec. 20, 1927. *Constitución de la Rep. de Guatemala; Sec. de Gob. y Just.* (Guatemala, 1933). 70 *British and Foreign State Papers* 866; 78 *ibid.* 1007.

Central American National Union on a stable, just, popular and suitable plan the Republic of Guatemala will be ready to reincorporate herself therein.

Art. 54. Subd. 9, Par. 3. To submit to arbitration any questions concerning the boundaries of the Nation shall require the favorable vote of two-thirds of the Deputies who compose the Assembly; and the decree must set forth the bases of the arbitration and explain the matters which are to be the object thereof.

Chile and Colombia having signed an arbitration treaty at Bogotá on September 3, 1880,[21] Colombia invited other Latin-American nations to meet at Panama on December 1, 1881, to sign it also. Representatives of Colombia, Costa Rica, Guatemala, and Salvador met at Panama on January 5, 1882,[22] and after a conference in which they decided that the attendance of any others could not be hoped for, the three Central American representatives voted that they could not fulfill their joint mission in the absence of the representatives of other countries. Barrios cherished the idea of federation and on February 28, 1885,[23] proclaimed the establishment of the Central American Union, with a general assembly to meet at Guatemala City in May 1886. Costa Rica, Nicaragua, and Salvador opposed the Union,[24] and on March 22, 1885,[25] entered into an offensive and defensive alliance against Guatemala. Barrios invaded Salvador and on April 2, 1885, was killed in battle, and his decree of February 28 was revoked.[26]

Guatemala, Honduras, and Salvador signed a general treaty of peace and friendship at Guatemala City on September 12, 1885,[27] and all five nations signed a treaty of peace and friendship at Guatemala City, February 16, 1887.[28] A new proposal for union was discussed by delegates of all five republics meeting at San Salvador in September 1889, and they signed a provisional pact on October 15, 1889.[29] Guatemala, Honduras, Nicaragua, and Salvador signed at San Salvador on May 23, 1892,[30] a treaty of peace and arbitration, setting up a Central American diet of one representative from each country. The treaty was submitted to Costa Rica for her adhesion, which was not obtained. Guatemala provided in the Agrarian Law of February 9, 1894:[31]

Art. 18. Lands bounding with the neighboring nations cannot be alienated except to native or nationalized Guatemalans.

[21] Not ratified. For later treaty, see Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 293.

[22] *U. S. For. Rel.*, 1881, pp. 102, 600; 1883, pp. 32–56. 74 *British and Foreign State Papers* 257.

[23] *U. S. For. Rel.*, 1877, p. 63; 1885, pp. 75–144. 77 *British and Foreign State Papers* 446.

[24] *U. S. For. Rel.*, 1878, p. 76; 1885, pp. 126, 136, 143; 1886, pp. 46, 49. 77 *British and Foreign State Papers* 458.

[25] *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 375.

[26] 77 *British and Foreign State Papers* 459–476.

[27] Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 268.

[28] *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 57. *U. S. For. Rel.*, 1887, pp. 85–107.

[29] Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XVIII (1893), 457. *Arch. Dipl.*, 2e Sér., XXXIII (1890), 67; XXXIV (1890), 233.

[30] Ratified by Honduras, Salvador, and Nicaragua. *Col. de Trats. de Guatemala* (Guatemala City, 1892), I, 488. *U. S. For. Rel.*, 1894, pp. 436–438.

[31] Decr. Ejec. 483. *Leyes Vigs.* (Mendez, Guatemala City, 1927), 327.

The Foreigners Law of February 21, 1894,[32] provided:

Art. 108. The acquisition of vacant lands in frontier territory is absolutely forbidden to natives of the bounding nations and to those naturalized in them.

The Agrarian Law was amended on April 23, 1896,[33] by adding to Article 18:

Boundary lands are to be understood to be those included within three leagues distance measured from the frontier to the interior of the Republic.

Honduras, Nicaragua, and Salvador formed a Greater Republic of Central America under a treaty signed at Amapala on June 20, 1895.[34] Costa Rica and Guatemala signed with the Greater Republic of Central America, then composed of Honduras, Nicaragua, and Salvador, at Guatemala City on June 15, 1897,[35] a treaty of union, to form one sole, free and independent nation called the Republic of Central America. A constitution for the United States of Central America signed by Honduras, Nicaragua, and Salvador at Managua on August 27, 1898,[36] provided (Article 161) for the admission of Costa Rica and Guatemala when they wished; but because of a revolution in Salvador which broke out on November 13, 1898, the United States of Central America ceased to exist on November 29, 1898.[37] Costa Rica, Honduras, Nicaragua, and Salvador signed a convention of peace and arbitration at Corinto on January 20, 1902.[38] Guatemala, Honduras, Nicaragua, and Salvador signed a convention for non-intervention and arbitration at San Salvador, November 2, 1903.[39]

A Central American peace conference of representatives of all five republics met at Washington in fourteen sessions from November 14 to December 20, 1907,[40] and signed on December 20, 1907,[41] a general treaty of peace and amity and a convention for a Central American Court of Justice,[42] which was installed at Cartago on May 25, 1908. The interoceanic railway of Guatemala was opened January 15, 1908.[43] Guatemala issued a proclamation of neutrality on August 12,

[32] Decr. Ejec. 491. Decr. Leg. 245 of April 30, 1894. *Leyes de Inmigr'n y Extranjeria* (Mendez, Guatemala City, 1931), 80 at 96.

[33] Decr. Leg. 326. *Leyes Vigs.* (Mendez, Guatemala City, 1927), 337.

[34] Ratifications exchanged at San Salvador, Sept. 15, 1896. *U. S. For. Rel.*, 1896, pp. 367–371, 389–395, 456–465. 92 *British and Foreign State Papers* 227. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXII (1905), 276–292.

[35] Not ratified by any of the signatories. 92 *British and Foreign State Papers* 234.

[36] *Dig. Const'l de Honduras*, 1824–1921 (Tegucigalpa, 1923), 191.

[37] *U. S. For. Rel.*, 1898, pp. 172–178. 92 *British and Foreign State Papers* 241.

[38] *U. S. For. Rel.*, 1902, pp. 881–883. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXI (1905), 243.

[39] *Trats. Vig. de Honduras* (Tegucigalpa, 1905), 167. *U. S. For. Rel.*, 1904, p. 351.

[40] *Monthly Bull. of Int. Bureau of Amer. Reps.*, XXV (1907), 1334–1373. 100 *British and Foreign State Papers* 834. *Amer. J. Int. Law*, II (1908), 144.

[41] *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 7. *Convs. Int. de Nicaragua* (Managua, 1913), 135. *U. S. For. Rel.*, 1907, II, 665–704. 100 *British and Foreign State Papers* 835, 840. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., III (1910), 94.

[42] *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 21. *Convs. Int. de Nicaragua* (Managua, 1913), 146. *Amer. J. Int. Law*, VIII (1914), Supp., 194; XXVI (1932), 759–786. *U. S. For. Rel.*, 1908, pp. 215–247. 100 *British and Foreign State Papers* 841–847. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., III (1910), 105. *Rev. gén. de dr. int. pub.*, XV (1908), 604.

[43] *U. S. For. Rel.*, 1908, pp. 404–407.

1914,[44] but on April 27, 1917, broke off diplomatic relations with Germany and on April 20, 1918,[45] assumed the same belligerent attitude as the United States toward Germany. Guatemala became a member of the League of Nations, January 10, 1920. Delegates of Costa Rica, Guatemala, Honduras, and Salvador signed at San José on January 19, 1921,[46] a treaty of union providing for the formation of a federation of Central America, with a constitution providing for a federal executive council (like the Swiss), a bicameral legislature to sit in a federal district, and federation control of foreign laws and treaties. Nicaragua declined to sign, for fear that the agreement might affect unfavorably the Bryan-Chamorro Treaty, and the Costa Rican Congress rejected the treaty of union by a close vote. Guatemala, Honduras, and Salvador ratified the treaty[47] and elected members of the provisional federal council, and a National Constituent Assembly meeting at Tegucigalpa, Honduras, from July 20, 1921, to January 29, 1922, agreed on September 9, 1921, on a political constitution for the Republic of Central America,[48] with provisions for the accession of (Article 190) Costa Rica and (Article 191) Nicaragua. A revolution in Guatemala against the Herrera administration in December 1921 took her out of the federation; Salvador withdrew on February 4, 1922;[49] and the union movement collapsed. At a Central American conference which met in Washington on December 4, 1922, all five of the republics signed on February 7, 1923,[50] twelve treaties and conventions and three protocols which included a treaty of peace and amity; a convention for the establishment of an international Central American tribunal of three neutral arbitrators chosen from a panel of thirty jurists to hear and decide without appeal all controversies or questions which then existed or might thereafter arise between them, whatever their nature or origin, except those which affected the sovereign and independent existence of any of the republics; and, with the United States, a convention for the establishment of international commissions of inquiry. Guatemala provided in the Land Inscription Law of May 17, 1926:[51]

Art. 16. The quality of [being] Guatemalan by origin is necessary to acquire and possess lands bounding with the neighboring nations, understanding by "bounding" lands

[44] Decree No. 718. 33 *Recop. de las Leyes* 381. *Rev. gén. de dr. int. pub.*, XXIV (1917), docs. 225.

[45] Decree No. 727. 36 *Recop. de las Leyes* 15. Naval War College, *International Law Documents*, 1917 (Washington, 1918), 162. Decr. Leg. 976. 37 *Recop. de las Leyes* 6. *U. S. For. Rel.*, 1917, Supp., I, 274.

[46] *League of Nations Treaty Series*, No. 113, V, 9. *U. S. For. Rel.*, 1920, I, 168–179; 1921, I, 143–164. 114 *British and Foreign State Papers* 831. *Amer. J. Int. Law*, XV (1921), 255.

[47] Ratified by Guatemala, May 12, 1921; Honduras, April 11, 1921; Salvador, April 15, 1921.

[48] *Recop. de las Leyes de Guatemala*, 1921–22 (Guatemala City, 1926), XL, 243. *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 245.

[49] *Recop. de las Leyes de Guatemala, 1921–22* (Guatemala City, 1926), XL, 166, 168, 177, 590. 116 *British and Foreign State Papers* 777. *For. Aff.*, IX (1931), No. 3, Spec. Supp. vii. *Current History*, XL (1934), 669.

[50] *Amer. J. Int. Law*, XVII (1923), 313; XIX (1925), 164. See Chap. III, Secs. 157, 158 and 159, *infra*.

[51] Decr. Leg. 1455. *Leyes Vigs.* (Mendez, Guatemala City, 1927), 342.

included within 15 kilometers [9.32 miles] distance measured from the frontier to the interior of the Republic.

The foreign ministers of Guatemala, Honduras, and Salvador signed at San Salvador on May 27, 1927, an agreement pledging the three states to a common policy in matters of general concern to Central America. The United States refused to recognize the Guatemalan government set up by General Manuel Orellana C. on December 16, 1930,[52] and he resigned on December 31, 1930. President Jorge Ubico of Guatemala, who took office on February 14, 1931, was said to be a partisan of Central American union, but accomplished nothing new or definite in that direction. Guatemala granted Japan certain tariff concessions in October 1935. Guatemala on May 26, 1936,[53] gave notice of her withdrawal from the League of Nations. In 1937 announcement was made of an elaborate project for the dredging of the fifty-mile-long channel of the Chiquimulilla River, which runs parallel to the Pacific Ocean and is separated from it only by a low land barrier two miles wide, from the port of San José southeastward to the River of Peace near the Salvador border. As a gesture of friendliness and sign of cordial relations, Guatemala on January 27, 1938, granted Salvadorian farmers on lands near the border in Guatemala permission to take their produce into Salvador free of export duty. The 1926 law as to ownership only by native Guatemalans of lands within fifteen kilometers of any Guatemalan boundary was strengthened by an executive decree of July 16, 1938, specifying punishment for violations.

In May 1939 Major John Davis, U. S. A., was relieved by Major Victor W. B. Wales of Arizona, U. S. Cavalry, retired, in charge of the Guatemala Military Academy, one of the best in Central America. Guatemala declared her neutrality in the Hitler war on September 4, 1939.

Honduras

Cristóbal de Olid with an expedition sent by Cortéz from Mexico City reached Honduras in 1524, and a little later Gil González Dávila landed on the coast and marched across Honduras to take possession of Nicaragua. In 1633 Dutch pirates sacked and abandoned Trujillo; and in 1639 an attack by English pirates was beaten off.

On September 19, 1816, the Port of Trujillo was segregated from the audiencia of Guatemala and reincorporated in the government and intendency of Hon-

[52] *Amer. J. Int. Law*, XXV (1931), 122, 299.
[53] Effective May 25, 1938. *League of Nations Monthly Summary*, XVI (1936), 132.

duras. Until 1821 Honduras formed part of the captaincy-general of Guatemala. The first constitution of December 11, 1825,[54] provided:

Art. 1. The State of Honduras is free and independent of every foreign power or government.

Art. 2. It is one of the federated states of the Republic of Central America.

Art. 4. Its territory includes all that belongs and has always belonged to the Bishopric of Honduras. A law shall describe its boundaries.

After 1825 Honduras formed part of the Federation of Central America until a Constituent Assembly at Comayagua on October 26, 1836, proclaimed that the state of Honduras was free, sovereign, and independent. The second constitution, adopted January 11, 1839,[55] provided:

Art. 1. All its inhabitants compose the State of Honduras; it is free and independent.

Art. 2. It shall be one of the federated states of Central America, when it agrees with the other States on the pact to unite them.

Art. 4. The State of Honduras comprehends all the territory which, in the time of the Spanish Government, was known by the name of province, and bounded as follows: on the west by the State of Guatemala; on the south, southeast and west by that of Salvador; on the south by the creek of Conchagua in the Pacific Ocean; on the south-east and south by the State of Nicaragua; on the east, north-east and north by the Atlantic Ocean; and the islands adjacent to its coasts in both seas. When convenient so to do, the limits which separate it from the other States shall be accurately laid down.

The third constitution of February 4, 1848,[56] provided:

Art. 1. All its inhabitants compose the State of Honduras; it is free and independent.

Art. 2. It is one of the Confederated States of Central America by virtue of its free acceptance of the pact of Nacaome.

Art. 4. The State comprehends all the territory which during the Spanish domination was known by the name of province, bounded as follows: on the east, south-east and south, by the State of Nicaragua; on the east, north-east and north, by the Atlantic Ocean; on the west by Guatemala; on the south, south-east and west by Salvador; on the south by the Bay of Conchagua on the Pacific; and the islands adjacent to its coasts in both seas. When possible, the boundaries which separate it from the other States shall be accurately defined.

Ephraim George Squier, minister of the United States to Central America, signed with Honduras without authorization from the State Department at León de Nicaragua on September 28, 1849,[57] a general treaty of amity, navigation, and

[54] *Col. de las Consts. Pols. de Honduras* (Vallejo, New York, 1878), 59. *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 53.

[55] *Col. de las Consts. Pols. de Honduras* (Vallejo, New York, 1878), 81. *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 83. 30 *British and Foreign State Papers* 1192.

[56] *Col. de las Consts. Pols. de Honduras* (Vallejo, New York, 1878), 111. *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 99. 36 *British and Foreign State Papers* 1086.

[57] 40 *British and Foreign State Papers* 998. *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 55, 393–401. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 186.

commerce, and a protocol by which, after reciting that the two countries desired "to secure for the benefit of each other and the general good of mankind, the full and perfect enjoyment of the proposed grand Interoceanic Canal through the Isthmus of Nicaragua and (were) anxious to remove any cause of apprehension that the Island of Tigre, in the Gulf of Fonseca, and commanding the same, may fall into the possession of foreign and unfriendly Powers whereby the free transit of the commerce of the world may be obstructed, and the usefulness of the contemplated great work impaired," (Article 1) Honduras ceded to the United States the Island of Tigre for the time (but not over eighteen months) pending the ratification or rejection of the general treaty signed the same day between them. The United States consul at León immediately gave notice of the cession to all the foreign diplomatic agents in Central America; but on October 16, 1849, Frederick Chatfield, the British diplomatic representative, with Commander James A. Paynter of H. M. paddle-wheel steam sloop *Gorgon*, landed with an armed force on Tigre and other islands in the bay, lowered the Honduran flag and raised and saluted that of Great Britain. In the ensuing diplomatic correspondence,[58] the British charged bad faith in the temporary cession of Tigre by Honduras to the United States, and claimed to have taken possession of the islands as a measure of reprisal against Honduras and Salvador for wrongs sustained by British subjects within their territories; but Great Britain evacuated the islands before January 5, 1850.

On April 28, 1854,[59] President Trinidad Cabanas approved charters for the Honduras Interoceanic Railway Company and the Honduras Steamship and Navigation Company, composed of a group of seven United States citizens led by Robert J. Walker and Amory Edwards, for constructing a route of communication between the Atlantic and Pacific oceans (with ships to the United States) by water or by railway wholly or in part within the territories of Honduras. This was to be completed in eight years, the charter privileges to revert to the state in seventy years, with the right to purchase the road at a just valuation, Honduras agreeing to open negotiations with the various governments with which it had relations for their separate recognition of the perpetual neutrality and the protection of the route. On February 20, 1860, President Santos Guardiola approved a contract with the Agricultural and Navigation Company, of New York, granting for forty years the exclusive privilege of steam navigation on one or more of the rivers Aguan, Tinto, and Patook in the Department of Olancho, and the right to establish a free colony of Europeans, such as Germans, Belgians, and

[58] 40 *British and Foreign State Papers* 997–1003. Moore, *Dig. Int. Law* (Washington, 1906), III, 183.

[59] 45 *British and Foreign State Papers* 571, 581; 51 *ibid.* 907.

Italians, on such rivers, with a grant of 36,000 acres of waste land of the state. Honduras signed with the United States at Comayagua on July 4, 1864,[60] a treaty of friendship, commerce, and navigation which provided:

Art. 14. Inasmuch as a contract was entered into by the Government of Honduras and a company entitled the "Honduras Inter-oceanic Railway Company," for the construction of a railway from the Atlantic to the Pacific Oceans, through the territories of Honduras, which contract was ratified by the constitutional powers of the State, and proclaimed as a law on April 28, 1854; and inasmuch, by the terms of article 5, section VI, of said contract, "the Government of Honduras, with the view to secure the route herein contemplated from all interruption and disturbance from any cause, or under any circumstances, engages to open negotiations with the various Governments with which it may have relations for their separate recognition of the perpetual neutrality, and for the protection of the aforesaid route"; therefore, to carry out the obligations thus incurred:

1. The Government of Honduras agrees that the right of way on or transit over such route or road, or any other that may be constructed within its territories, from sea to sea, shall be at all times open and free to the Government and citizens of the United States for all lawful purposes whatever . . . and finally, as an evidence of its disposition to accord to the travel and commerce of the world all the advantages resulting from its position in respect to the two great oceans, Honduras, of her own good will, engages to establish the ports at the extremities of the contemplated road, as free ports, for all the purposes of commerce and trade.

2. In consideration of these concessions, in order to secure the construction and permanence of the route or road herein contemplated, and also to secure, for the benefit of mankind, the uninterrupted advantages of such communication from sea to sea, the United States recognizes the rights of sovereignty and property of Honduras in and over the line of said road, and for the same reason guarantees, positively and efficaciously, the entire neutrality of the same, so long as the United States shall enjoy the privileges conceded to it in the preceding section of this article. And when the proposed road shall have been completed, the United States equally engages, in conjunction with Honduras, to protect the same from interruption, seizure, or unjust confiscation, from whatsoever quarter the attempt may proceed.

3. Nevertheless, the United States, in according its protection to the said route or road, and guaranteeing its neutrality, when completed, always understands that this protection and guarantee are granted conditionally, and may be withdrawn if the United States should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this article, either by making unfair discriminations in favor of the commerce of any nation or nations over the commerce of any other nation or nations, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. The aforesaid protection and guarantee shall not, however, be withdrawn by the United States without first giving six months notice to the Republic of Honduras.

[60] Ratifications exchanged at Tegucigalpa, May 5, 1865. 13 Stat. L. 699. *U. S. Treaty Series*, No. 172. *Trats. Vig. de Honduras* (Tegucigalpa, 1914), II, 7. *Treaties of the U. S.* (Malloy, 1910), I, 952.

The fourth constitution, of September 28, 1865,[61] provided:

Art. 2. The Republic of Honduras is sovereign, free and independent.

Art. 5. The Republic comprises all the territory which during the Spanish domination was known by the name of Province, circumscribed by the following boundaries: on the east, south-east and south by the Republic of Nicaragua; on the east, north-east and north by the Atlantic Ocean; on the west by Guatemala; on the south, south-east and west by Salvador; and on the south by the Bay of Conchagua on the Pacific; and the islands adjacent to its coasts in both seas. A law will define specially the boundaries of the territory of the Republic.

The fifth constitution, of December 23, 1873,[62] provided:

Art. 1. The Honduran people constitute themselves a Republic, sovereign, free and independent.

Art. 4. The Republic comprises all the territory which, during the Spanish domination, was known by the name of province, circumscribed by the following boundaries: on the east, southeast and south by the Republic of Nicaragua, on the east, northeast and north by the Atlantic Ocean; on the west by Guatemala; on the south, southeast and west by Salvador; and on the south by the Bay of Conchagua on the Pacific; and the islands adjacent to its coasts in both seas. A law will define specially the boundaries of the territory of the Republic.

In December 1873 [63] Presidents Justo Rufino Barrios of Guatemala and Santiago González of Salvador intervened in the politics of Honduras and caused Céleo Arias to be replaced as President by Ponciano Leíva, supposed to be more to their liking.

The sixth constitution, of November 1, 1880,[64] provided:

Art. 1. Honduras considers itself a section separated from the Republic of Central America. In consequence it recognizes as its principal duty and most pressing necessity its reunion with the other sections of the dissolved Republic.

Art. 2. The Honduran nation is a sovereign, free and independent Republic.

Art. 5. The boundaries of the Republic and its territorial division will be the subject of a law.

Honduras promised in 1885 to coöperate with President Barrios of Guatemala to establish the Central American Union, but after his death Honduras signed on April 11, 1885,[65] a treaty of peace with Costa Rica, Nicaragua, and Salvador. Guatemala, Honduras, and Salvador signed at Guatemala City on September 12, 1885,[66] a general treaty of peace and friendship to which Costa Rica and Nicaragua declined to become parties when invited. The five republics

[61] *Col. de las Consts. Pols. de Honduras* (Vallejo, New York, 1878), 143. *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 117. 58 *British and Foreign State Papers* 287.

[62] *Col. de las Consts. Pols. de Honduras* (Vallejo, New York, 1878), 173. *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 135.

[63] *U. S. For. Rel.*, 1874, pp. 124–126.

[64] *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923). 155. 71 *British and Foreign State Papers* 906.

[65] 77 *British and Foreign State Papers* 463.

[66] *U. S. For. Rel.*, 1886, p. 63; 1887, p. 85.

signed at Guatemala City on February 16, 1887,[67] a general treaty, which included among other things a provision for a Congress of the States to meet every two years at the capitals in turn.

The seventh constitution of October 14, 1894,[68] provided:

Art. 1. Honduras is a state separated from the Republic of Central America. In consequence, it recognizes as a primary necessity to return to union with the other sections of the dissolved Republic.

Art. 2. Honduras is a free, sovereign and independent nation.

Art. 5. The boundaries of Honduras and its territorial division will be determined by law.

Spain's first direct bilateral dealing with Honduras was the treaty of peace and friendship authorized by Queen María Cristina as regent for Alfonso XIII and signed at Guatemala City, November 17, 1894,[69] constituting Spain's recognition of the independence of the republic.

The eighth constitution of September 2, 1904,[70] provided:

Art. 1. Honduras is a State separated from the Federation of Central America. In consequence it recognizes as its principal duty and its most pressing necessity to return to union with the other States of the dissolved Republic.

Art. 2. Honduras is a free, sovereign and independent nation.

Art. 5. The boundaries of Honduras and its territorial division shall be determined by law.

By decree of February 8, 1908,[71] the seventh constitution of October 14, 1894, was reëstablished in place of President Manuel Bonilla's eighth of September 2, 1904. In the Central American general treaty of peace and amity signed at Washington, December 20, 1907, it is provided:

Art. 3. Taking into account the central geographical position of Honduras and the facilities which this circumstance has given to make its territory most often the theater of Central American conflicts, Honduras declares from now on its absolute neutrality in event of any conflict between the other Republics; and the latter, in their turn, provided such neutrality be observed, bind themselves to respect it and not to violate in any case the Honduran territory.

As a voluntary declaration, it may be doubted if this had any real effect on Honduras' international status, except perhaps with the other four signatories of that treaty.[72]

[67] *U. S. For. Rel.*, 1887, p. 100; 1888, I, 131, 144, 165.

[68] *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 171.

[69] *Trats. de España* (Olivart, Madrid, 1902), XI, 155.

[70] *Dig. Const'l de Honduras, 1824–1921* (Tegucigalpa, 1923), 221.

[71] Decr. Leg. 3. *La Gaceta* (Tegucigalpa, 1908), Año XXXIII, 93.

[72] *Trats. Vig. de Honduras* (Tegucigalpa, 1913), I, 7. *U. S. For. Rel.*, 1907, II, 692. *Treaties of the U. S.* (Malloy, 1910), II, 2392. Raymond Leslie Buell, *Int. Relations* (New York, 1925), 553; *Amer. J. Int. Law*, XXI (1927), 84.

Guatemala was included by Honduras in her complaint against Salvador to the Central American Court of Justice on July 10, 1908, more fully treated hereafter. The United States on January 10, 1911,[73] signed a convention with Honduras permitting a loan from New York bankers, to be secured by the customs receipts, under supervision of a collector-general approved by the president of the United States; but the agreement was disapproved by the Honduran Congress on January 31, 1911. A revolution against the Honduran government of President Miguel R. Dávila which broke out on January 20, 1911, was quietly aided by the United States.[74]

Honduras issued a proclamation of neutrality on October 5, 1914,[75] broke off diplomatic relations with Germany on May 17, 1917, and declared war on Germany on July 19, 1918. Revolutionary activities by exiles along the Nicaraguan border were suppressed in 1920.[76] Honduras became a member of the League of Nations, November 3, 1920.

The ninth constitution of September 10, 1924,[77] provided that:

Art. 1. Honduras is a State separated from the Republic of Central America. In consequence, it recognizes as a primordial necessity to return to union with the other sections of the dissolved Republic.

Art. 2. Honduras is a free, sovereign and independent Nation.

Art. 5. The boundaries of Honduras and its territorial division shall be determined by law.

The Agrarian Law of November 20, 1924,[78] declared that:

There belong to Honduras:

1. The lands situated on terra firma within its territorial boundaries; and the islands and keys in the Pacific which have been considered Honduran.

2. The Islas del Cisne [Swan Islands], Viciosas, Misteriosas, Mosquitos and the Cays: Gorda, Vivorillo, Cajos, Becerro, Cocorocuma, Caratasca, Falso, Gracias á Dios, Los Bajos, Pichones, Palo de Campeche and the others situated in the Atlantic, considered Honduran, besides the Islas de la Bahía.

The Bay and Swan Islands are considered further hereafter.[79]

A party of 165 United States marines was landed at La Ceiba to preserve order on April 20, 1925. In April 1936 Honduran revolutionaries invaded Honduras from Nicaragua in five places, and though government planes routed them

[73] *U. S. For. Rel.*, 1912, pp. 549–619. *Amer. J. Int. Law*, V (1911), 1044; V (1911), Supp., 274. *Rev. gén. de dr. int. pub.*, XIX (1912), 127.

[74] *U. S. For. Rel.*, 1911, pp. 291–307. *Amer. J. Int. Law*, XXX (1936), 385.

[75] Decree 38. *Rec. gén. de dr. int. pub.*, XXIV (1917), docs. 226. *U. S. For. Rel.*, 1917, Supp., I, 284.

[76] *U. S. For. Rel.*, 1920, II, 854–872.

[77] *Const. Pol. de Honduras* (Tegucigalpa, 1924). 120 *British and Foreign State Papers* 590.

[78] Decreto Num. 34. *La Gaceta* (Tegucigalpa, 1925), Año L, 73.

[79] See Chap. II, Secs. 2 and 14, *infra*.

temporarily, chasing them back across the border, there were several new outbreaks with supposed invasions from Salvador, until on May 27, 1936, the revolt was reported suppressed. On July 10, 1936,[80] Honduras gave notice of her withdrawal from the League of Nations.

Boundary

When in 1842 the Federation of Central America was finally definitely dissolved, boundary disputes began at once between Guatemala and Honduras. In 1843 conflicting claims of jurisdiction resulted in a clash between municipal officials at Rincón del Jorge and La Labor, a few miles south of Copán. The two nations signed at Guatemala City on July 19, 1845,[81] a general treaty of friendship and alliance which provided:

> Art. 8. In the case of any cause of misunderstanding arising between the two contracting States [the question shall be decided by two arbitrators, named one by each State, and if they disagree by an umpire drawn by lot by those two from a submitted list].
>
> Art. 13. The States of Guatemala and Honduras recognize as their boundaries those laid down for the Diocese of each in the Royal Ordinance of Intendentes of 1786; and in order to fix the dividing line in a manner that cannot be doubted the two States will appoint their Commissioners in December next. In case these commissioners do not agree, or if the States do not agree to their decision, the question shall be settled in the manner provided in Article 8 of this treaty.

The commissioners were named [82] and met at Ocotepeque, September 21 to October 6, 1847, but after agreeing on a starting point for the line near Cerro Brujo were unable to settle anything further because the Intendentes Ordinance of December 4, 1786, provided that the boundaries of each diocese should be those of the respective intendencies and the extent of each intendency was uncertain. The commission discussed the main points through which the section of the line from Cerro Brujo to La Brea should pass, but dissolved in October 1847 without having otherwise fixed any of the line. War intervening several times between the two countries was held by Honduras to have put an end to the treaty of July 19, 1845, which has not been continued or revived in any other treaties since. Guatemala alleged invasion by Honduras of the department of Izabal in 1863–67. In March 1899 occupation by expeditions from Honduras, though perhaps only of filibusters, of the villages of Santa Cruz, Los Chajales, and Paraiso in or near

[80] Effective July 9, 1938. *League of Nations Monthly Summary* (1936), XVI, 209. *Amer. J. Int. Law*, XXXII (1938), 149.

[81] Ratified by Guatemala, Oct. 3, 1845; ratified by Honduras Aug. 16, 1845. *Col. de Trats. de Guatemala* (Salazar, Guatemala City, 1892), 514.

[82] For Guatemala, Juan José Flores, and José María Cervantes. Guatemalan Instructions, June 14, 1844. *Gac. de Guatemala* (Guatemala City, 1847), III, 82. *Gac. de los Tribunales* (Guatemala City, 1894), XI, 350.

the district of Palmilla, department of Izabal, elicited protests from Guatemala, and led to renewed diplomatic correspondence and negotiations.[83] A fresh start was made when Guatemala and Honduras signed at Guatemala City on March 1, 1895,[84] their first boundary convention, which, after reciting that both governments were desirous of establishing in a permanent manner the demarcation of the boundary between the two countries, "which up to now has not been done," provided:

Art. 1. The Governments of Guatemala and Honduras shall name a Mixed Technical Commission, composed of an equal number of members for each party, to study the antecedents, documents and data existing as to the limits of both Republics.

Art. 4. On the termination of its work, the Commission shall send the volumes of records to the respective Governments, and shall propose to them the bases which, in their opinion, should be adopted to celebrate a treaty to fix permanently the boundary lines of the two Republics, with a plan on which shall be traced the dividing line as they may consider it should be marked according to the result of their studies.

Art. 5. In view of the bases proposed by the Commission, the contending Governments shall proceed to discuss them, and to define a treaty of limits between Guatemala and Honduras.

Art. 9. If the Governments should not be able to agree on any one or more of the points of discussion, they agree to submit them to an Arbitrator, who shall be the President of any one of the Central American Republics, in the following order: Salvador, Nicaragua and Costa Rica.

Art. 10. In case of excuse or impediment by the Presidents of the Central American Republics, the point or points at issue shall be submitted to the decision of the King of Spain; and, in his default, to the President of any one of the Republics of South America, as may be agreed by the Chancelleries of both countries.

Art. 12. The decision of the Arbitrator, be what it may, shall be considered a perfect agreement, obligatory and perpetual, between the High Contracting Powers, and no appeal against it shall be admitted.

Art. 15. Immediately after the exchange of ratifications of this Convention, whether or not the Mixed Commission shall have begun its labors, the Governments of Honduras and Guatemala shall designate the Arbitrator who, in accordance with Article 9, shall give his decision on the point or points in which the said Governments may disagree.

Art. 16. The present Convention shall have a duration of ten years, in case its execution is interrupted, during which time it cannot be revised or modified in any manner, save by stipulations to the contrary, nor can the boundary question be settled by any other means.

Difficulties arose in carrying out this convention, and it was four times extended by agreement between the two governments, finally to March 1, 1914.[85]

[83] *U. S. For. Rel.*, 1899, pp. 364–371.

[84] Ratified by Guatemala (Decr. Leg. 282), April 25, 1895; ratified by Honduras (Decree 49), July 5, 1895; ratifications exchanged at Guatemala City, Jan. 20, 1896. *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 137. *Recop. de las Leyes de Guatemala, 1895* (Guatemala City, 1896), 270. 87 *British and Foreign State Papers* 530. *Rev. de dr. int. et de lég. comp.*, IV (1902), 624.

[85] To March 1, 1908, March 1, 1910, March 1, 1912, and March 1, 1914.

The mixed technical commission was finally constituted [86] and met twenty times, in various places, with suspensions during the rainy seasons, from June 1, 1908, to July 1, 1910.[87] The commission received many documents purporting to bear on record titles along the first section of the line, from Cerro Brujo at the corner of Guatemala, Honduras, and Salvador, 2,600 meters S 39°17′15″ E from the observatory at Caserío del Brujo in 14°26′32″ N latitude, eastward along the ridges of Las Dantas and Mojanal to La Brea; and along the second section of the line, from La Brea, on the old road from Ocotepeque to Esquipulas, to the parallel which passes through Las Ruinas de Copán; and examined and recorded the line of actual occupation or possession for the first two sections. The work was finally broken off indefinitely in 1910 on the complaint of the Honduran engineer that the Guatemalan authorities would not permit his assistants to move about with sufficient freedom to gather field data for a necessary map of the region of the third and last section of the boundary line, between the parallel which passes through Las Ruinas de Copán and the Atlantic Ocean. Negotiations started before the expiration of the last extension of the 1895 convention resulted five months after such expiration in the signing at Guatemala City on August 1, 1914,[88] of a second boundary convention which again recited the desire of both governments to establish permanently the demarcation of the boundary line, and provided:

Art. 1. The Governments of Guatemala and Honduras shall appoint a Mixed Technical Commission, composed of an equal number of members for each party to study all the antecedents, documents and data which exist in regard to the boundary between the two Republics.

Art. 4. When the Commission has concluded its work it shall send its record books to the respective Governments and shall set forth the bases which, in its opinion, should be adopted for the conclusion of a treaty which shall fix definitely the boundary between the two Republics, transmitting a sketch showing the dividing line which it judges, as the result of its studies, should be adopted.

Art. 5. The contracting Governments, having before them the bases which the Commission proposes, shall proceed to discuss and define in a treaty the boundary line between Guatemala and Honduras.

Art. 7. In agreeing upon the location of the dividing line between Guatemala and Honduras, the respective Governments may, if they consider it necessary or convenient, adopt

[86] By Engineer Claudio Urrutia and Lawyer J. Francisco Azurdia for Guatemala; Engineer Rosendo Contreras V. and Dr. Marcos Carias A., succeeded on Feb. 19, 1910 by Silverio Laínez, for Honduras. Salvador appointed Dr. Santiago I. Barberena as Special Commissioner on June 20, 1908, to give the Commission permission to enter Salvadorian territory at Cerro Brujo so far as necessary to fix the corner monument, and to witness the operation.

[87] *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 147. *Mem. del Sec. de Rels. Ext. 1911* (Tegucigalpa, 1912), 8.

[88] Ratified by Guatemala (Decr. Leg. 922), May 26, 1915; ratified by Honduras (Decr. Leg. 40), Feb. 1, 1915; ratifications exchanged at Guatemala City, June 12, 1915. *Recop. de las Leyes* (Guatemala City, 1915), XXXIV, 6, 372. *Col. de Trats. de Guatemala* (Guatemala City, 1919), III, 473. *La Gaceta* (Tegucigalpa, 1915), Año XL, 137. 107 *British and Foreign State Papers* 902.

the system of equitable compensation, abiding by the rules and usages established by international practice.

Art. 9. If the Governments should be unable to agree on one or any of the points under discussion, they agree to submit their contentions to an arbitrator, who shall be the President of the United States of America.

Art. 10. In the event of the President of the United States of America excusing himself or being unable to act, the disputed point or points shall be submitted to the President of the French Republic, in default of whom, to the President of the Republic of Chile, and if this high functionary should be unable to accept, to any one of the Presidents of the South American Republics upon whom the Chancelleries of the countries may agree.

Art. 12. The arbitral award, whatever it may be, shall be held as a perfect, obligatory and perpetual treaty between the High Contracting Parties, and no appeal whatever against it shall be allowed.

Art. 15. This Convention shall remain in force for ten years, during which time it cannot be revised or modified in any manner, save by a stipulation to the contrary nor can the boundary question be settled by any other means.

Art. 16. The High Contracting Parties declare that they recognize as valid the work carried out up to this date by the Mixed Boundary Commission in virtue of and in accordance with the Convention signed in this city on March 1, 1895.

The boundary commission was reorganized [89] and met at Ocotepeque on March 6, 1916, but the Guatemalan members, it was charged, would not let the Honduran engineers cross the Motagua River to make any surveys, so after three sessions the commission separated on March 12, 1916. From 1915 to 1917 the Cuyamel Fruit Company, a United States corporation with a concession from Honduras in 1912 of lands on the Atlantic coast, occupied areas claimed by Guatemala. In 1917 Guatemala sent a special boundary mission to Honduras to try to reach an agreement, but border conflicts threatened to bring the two states into armed conflict, whereupon the United States government on November 12, 1917,[90] tendered its good offices to both nations as mediator and invited them to send representatives to Washington to discuss the issue. Both Honduras and Guatemala accepted, and sent special missions [91] to Washington, where on May 20, 1918, the boundary conference opened, with Boaz Long, United States minister to Salvador, acting for the mediator, Secretary of State Robert Lansing. There were four meetings [92] at which a great number of documents and a report and brief were submitted by each nation. Guatemala contended for a line in

[89] For Guatemala: Claudio Urrutia, Chief, 4 Engineers, a lawyer, and 2 assistants; for Honduras: Silverio Laínez and 4 Engineers. Exec. Decr., July 9, 1915; *Recop. de las Leyes* (Guatemala City, 1915), XXXIV, 132. *Mem. del Sec. de Rels.*, Ext. 1915–16 (Tegucigalpa), viii, Anexo, Num. 5, pp. 113–126.

[90] *U. S. For. Rel.*, 1917, pp. 760–801; 1919, I, 85–114; 1920, I, 311–318. *Mem. del Sec. de Rels. Ext. 1916–17* (Tegucigalpa), Anexos 97–103; *ibid.*, 1918–19 (Tegucigalpa), 9–12, Apens. Nums. 4–12, pp. 13–25.

[91] Chiefs of Mission: Foreign Minister Luis Toledo Herrarte for Guatemala; Ex-President Policarpo Bonilla for Honduras.

[92] On May 20, 22, 24 and June 25, 1918. *Mediation of the Honduran Guatemalan Boundary Question*; 2 vols. (Washington, 1919, 1920).

accordance with a cédula issued by Philip II at Zaragoza on September 8, 1563, and Honduras insisted on the line of possession as in 1910. An inspection of the disputed area was made by a commission appointed by the United States Department of Agriculture, which duly made its report; and in February 1920 Dr. Leo S. Rowe, acting as commissioner for the friendly mediator, fixed a term of fifteen days within which the representatives of the two nations should agree on a common line. The Honduran delegate stated that his instructions were not to cede any point of the line demanded by his government in their brief, and the Guatemalan delegate declared that, as this line included a great part of the course of the Motagua River, any settlement on this basis was unacceptable. Meetings were accordingly suspended by Dr. Rowe, and the mediation proceedings were terminated. The special mission of Guatemala withdrew from Washington on January 3, 1921, and that of Honduras on March 24, 1921.[93] New suggestions by the Department of State in January 1923,[94] for arbitration were received favorably by both countries, but in September 1923 were put off by President Coolidge at the desire of Guatemala until after the presidential election of October 28–29, 1923, in Honduras, which resulted in a revolution. In March 1925 there were minor conflicts in the region of the Motagua River, though perhaps rather revolutionary than frontier incidents. In February 1928 Guatemalan soldiers were sent to stop reported Honduran incursions near Chachagualilla. Further agreements for mediation by the United States Department of State were sought unsuccessfully by Roy T. Davis, United States minister to Costa Rica, in conferences with missions from both countries at Cuyamel, Honduras, April 14–23, 1928.[95] The State Department thereupon proposed that the question be submitted for settlement by arbitration before the International Central American Tribunal created by the Washington Convention of February 7, 1923, to which Guatemala assented but Honduras did not. On October 25, 1929, the United States invited both nations to discuss at Washington means for adjusting the dispute. Both governments accepted on November 12, 1929, and sent special delegations, which met in Washington on January 20, 1930,[96] and began discussions, presided over by Francis White, subsecretary of the United States Depart-

[93] *U. S. For. Rel.*, 1921, I, 231–234.

[94] *U. S. For. Rel.*, 1923, I, 354–355. *Mem. del Sec. de Rels. Ext. 1922–23* (Tegucigalpa, 1924), 6.

[95] Catarino Castro Serrano, *Nuestra Cuestión de Límites con Guatemala* (Tegucigalpa, 1927). Medardo Zúniga V., *La Cuestión de Límites* (Tegucigalpa, 1927). *Límites entre Guatemala y Honduras, Publicaciones de la Comisión de Límites* (español é ingles, Guatemala, julio 1928–nov. 1932), Nums. 1–23. *Fronteras de Honduras, Límites con Guatemala*, 3 vols. (Tegucigalpa, 1929–1930). Manuel Furnes Cerrato, *La Cuestión de Límites entre Honduras y Guatemala* (San Salvador, 1928). *La Prensa de Guatemala y la Cuestión de Límites con Honduras* (Guatemala, julio 1932). Karl Sapper, "A Modern Boundary Question" (translated from) *Geog. Politik* (Berlin, Nov. 1928). *For. Aff.*, VII (1929), 323. *Amer. J. Int. Law*, XXV (1931), 326.

[96] Mariano Vásquez, "Informe sobre la Conferencia de Límites," *La Gaceta* (Tegucigalpa, 1930), Año LV, 1601. *Recop. de las Leyes de Guatemala, 1929–30* (Guatemala City, 1932), XLVIII, 995–1043; 1930–31 (Guatemala City, 1932), XLIX, 767–784. *Bull. Pan Amer. Union*, LXIV (1930). 217, 910. *Survey of Int. Affairs*, 1930 (London, 1931), 439.

ment of State. The delegations came to a general agreement as to bases, and signed at Washington on July 16, 1930,[97] a third treaty for arbitration of the boundary dispute, which provided:

Art. 1. The high contracting parties agree that the Convention for the establishment of an International Central American Tribunal signed at Washington Feb. 7, 1923, is in effect between them, in accordance with Article 26 of that Convention. The Government of Guatemala makes this declaration without reservations. The Government of Honduras affirms that that Convention is obligatory as to all controversies with the exception of the boundary dispute between Guatemala and Honduras, taking as a basis the wording of Article 1 of the said Convention, which does not include questions with regard to which the parties may have agreed on another form of arbitration. [That Convention] was signed Feb. 7, 1923, while the Boundary Convention, signed Aug. 1, 1914, was in effect between the two countries. . . . Guatemala maintains that . . . the willingness manifested in 1923 to submit the question to the President of the United States of America lapsed with the Treaty of 1914 on which it was based. . . . Both parties, however, agree that the tribunal which takes cognizance of the boundary question between the two countries shall be organized in the same form prescribed in the Convention for the establishment of an International Central American Tribunal.

Art. 2. The Special Tribunal referred to by the preceding article shall be constituted of [Dr. Luis Castro Ureña of Costa Rica, appointed by Guatemala; Dr. Emilio Bello Codesido of Chile, appointed by Honduras; and the Chief Justice of the United States, Charles Evans Hughes, appointed by the two Governments by common agreement, to preside over the Tribunal].

Art. 5. The high contracting parties are in agreement that the only juridical line which can be established between their respective countries is that of the *uti possidetis* of 1821. Consequently, they are in accord that the Tribunal shall determine this line. If the Tribunal finds that one or both parties, in their subsequent development, have established, beyond that line, interests which should be taken into account in establishing the permanent boundary, the Tribunal shall modify as it may see fit the line of the *uti possidetis* of 1821 and shall fix the territorial or other compensation which it may deem just that either party should pay to the other.

Art. 10. All decisions of the Tribunal shall be arrived at by a majority of votes. In case the votes are scattered, the vote of the President of the Tribunal shall be decisive.

Art. 12. The high contracting parties confer on the Tribunal the necessary authority to settle by itself any difference which may arise with regard to the interpretation or carrying out of this treaty and the decisions of the said Tribunal.

Art. 14. The award of the Tribunal shall be handed down as soon as possible, and it shall set forth the points of fact and of law involved in the controversy, and the reasons and grounds which are considered valid for the decision. This award shall decide the boundary controversy finally and without appeal and shall be faithfully executed by the high contracting parties.

[97] Ratified by Guatemala, Aug. 17, 1931; ratified by Honduras (Decr. Leg. 100), Feb. 26, 1931; ratifications exchanged at Washington, Oct. 15, 1931. *Trats. de Límites entre Honduras y Guatemala* (Tegucigalpa, 1930). *La Gaceta* (Tegucigalpa, 1931), Año LVI, 817. 132 *British and Foreign State Papers* 823. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXXI (1936), 365.

Art. 15. The high contracting parties have agreed that the physical demarcation of the frontier shall be performed by a technical commission in conformity with the provisions of the convention supplementary to the present treaty signed on this same date.

Art. 17. [Private properties acquired under legitimate title shall be respected.]

An additional convention, also signed at Washington on July 16, 1930,[98] provided for the demarcation by monuments of the boundary line, when determined by the Arbitral Tribunal, by a technical commission of five engineers, two selected by each country and the fifth by the president of the United States. Both countries appointed representatives,[99] who presented their cases with documents and briefs at great length down to April 21, 1932,[100] before the Arbitral Tribunal, which held three public sessions at Washington on December 15, 1931, December 17, 1932, and January 23, 1933.[101] The special tribunal decided on January 8, 1932,[102] on the preliminary question, that as an International Central American Tribunal created by the convention of February 7, 1923, it was not competent to take cognizance of this pending boundary question, but that it had and assumed complete jurisdiction to take cognizance of and decide the controversy as a special boundary tribunal under the treaty of July 16, 1930. The tribunal then considered the case on the merits and on January 23, 1933,[103] handed down its opinion and award, accompanied by a detailed map, prepared in part by the United States army air corps by aerial photography, used for the first time in an American boundary dispute. As to the line of *uti possidetis* of 1821, the decision was that (1) the claim of Honduras to the territory north and west of the Motagua River was not sustained; (2) the evidence afforded no sufficient basis for assigning Omoa, the Cuyamel region, the disputed territory between the Motagua River and the Merendon range, or the disputed territory between Cerro Barbasco and the lands of Quirigua to either the province of Guatemala or the province of Honduras; (3) the lands in the Quirigua grant on the right bank of the Motagua River belonged to the province of Guatemala; and (4) as to the southern portion of the territory in dispute, the evidence of administrative control

[98] Ratified by Honduras, Feb. 26, 1931, *La Gaceta* (Tegucigalpa, 1931), Año LVI, 818. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXXI (1936), 370.

[99] For Guatemala: Carlos Salazar; Charles Cheney Hyde, Counsel.

[100] (All published at Washington unless otherwise noted). For Guatemala: *Alegato sobre la cuestión de compentencia del Trib. Int. Centroamericana* (Dec. 1931); *Brief on the Competency*, etc. (Dec. 1931); *Alegato* (Feb. 1932); *Case* (Feb. 1932); *Anexos* (Feb. 1932); *Annexes* (Feb. 1, 1932); *Alegato con Anexos*, 2a ed. (Guatemala, junio 1932); *Réplica* (Abril 1932); *Counter Case* (April 1932); *Anexos a la Réplica* (Abril 1932); *Annexes to the Counter Case* (April 1932); *Réplica con Anexos*, 2a ed. (Guatemala, julio 1932); *Dúplica* (Abril 1932); *Reply to the Counter Case of Honduras* (April 1932). For Honduras: *Alegato sobre la cuestión previa* (español é ingles, Dec. 17, 1931); *Alegato* (español é ingles, 1932); *Réplica* (1932); *Counter Case* (1932); *Impugnación a la Réplica de Guatemala* (1932).

[101] *Bull. Pan Amer. Union*, LXVI (1932), 93; LXVII (1933), 311.

[102] *Opinion and Judgment* (English and Spanish, Washington, 1932).

[103] *Opinion and Award* (English and Spanish, Washington, 1933). *Amer. J. Int. Law*, XXVII (1933), 313, 403–427. *Rev. de Der. Int.* (Habana, 1933), XXIII, 339. *League of Nations Official Journal*, 1933, 620

showed gaps. The award then went on to establish the definitive boundary in its entire length,

from the Salvadorean boundary at the point nearest the summit of Cerro Montecristo, north straight to the headwaters of the nearest stream tributary to the Frío or Sesecapa river, northerly along the median line of this tributary downstream to its confluence with the Frío or Sesecapa river, along the median line of that river downstream to its confluence with the creek called El Chaguiton, along the median line of that creek upstream to its headwaters and continuing due north on the summit of the water divide between the drainage basins of the Atulapa and Frío or Sesecapa rivers, easterly straight to the southernmost and higher of the twin peaks of Cerro Tecomapa, easterly straight about 400 meters to the confluence of two small creeks forming a tributary of Tecomapa or Agua Caliente creek, along the median line of that tributary downstream easterly to its confluence with Tecomapa or Agua Caliente creek, along the median line of Tecomapa or Agua Caliente creek downstream northeasterly to its confluence with the Olopa river, along the median line of the Olopa river downstream to its confluence with La Brea creek, along the median line of La Brea creek upstream to a point 60 meters below the confluence of that stream with El Incienso creek, easterly straight [2 miles] to the highest point of Cerro Oscuro, generally easterly along the continental water divide to its junction with the water divide of the drainage basin of the Blanco river, northerly along the water divide between the drainage basins of the Chanmagua and Blanco rivers to its junction with the water divide of the drainage basin of La Raya or Pezote creek, northerly straight to the headwaters of the nearest tributary of La Raya or Pezote creek, northerly downstream along the median line of said tributary to its confluence with La Raya or Pezote creek, northerly downstream along the median line of that creek to its confluence with the Playon river, upstream along the median line of the Playon river to its confluence with the Zanjon de Laguna Verde, northeasterly straight to the confluence of the Templador and Sulay rivers, northwesterly straight to the highest point of Cerro Ojo de Agua del Amate, northerly straight to the summit of Cerro San Cristóbal, northwesterly straight to the summit of Cerro Sepulturas, northwesterly straight to Bonete del Portillo, northerly straight to Cerro Jute, northeasterly along the crest of the ridge on which Cerro Jute is situated to the water divide between the drainage basins of San Antonio and Tizamarte creeks, northeasterly along the water divide between the drainage basins of Sesesmiles creek and the Pexja river to its junction with the water divide of the drainage basin of the Managua river, northerly along the water divide between the drainage basins of the Pexja and Managua rivers to a point at the junction of the secondary water divide in the Managua river basis at the settlement called Palmichal, along this secondary water divide in a northeasterly direction to the Managua river, along the median line of the Managua river downstream to the mouth of the first creek north of the village of Aldea Nueva, northeasterly straight [12 miles] to a point on the Morja river due east of the southeast corner of La Francia clearing, northeasterly straight [24.4 miles] to a point at the junction of the secondary water divide between the Juyama and Encantado rivers with the main water divide between the Motagua and Chamelecon drainage basins, northeasterly straight [6.25 miles] to a point at the junction of the secondary water divide between the Bobos and Animas rivers with the main water divide between the Motagua and Chamelecon drainage basins, northeasterly straight to a point at the junction of the secondary water divide between the Animas and Negro rivers with the main water divide between the

Motagua and Chamelecon drainage basins, northeasterly following the meanders of the main water divide between the Motagua and Chamelecon drainage basins to a point at its junction with the secondary water divide between the two principal branches of the Chiquito or Platanos river, northeasterly straight [5.75 miles] to the highest point of the mountain called Cerro Escarpado near the junction of the secondary water divides between the Chiquito or Platanos, the Nuevo or Cacao and the Chachagualilla river basins, northeasterly straight [11.2 miles] to a point at the center of the Cuyamel Railroad bridge over the Santo Tomás river, northeasterly straight to the southernmost point on the right bank of the Tinto river which flows out of the Laguna Tinta, along the right bank, taken at mean high water mark, of the Tinto river downstream to its point of discharge into the Motagua river, along the right bank, taken at mean high water mark, of the Motagua river downstream to its mouth on the Gulf of Honduras. As thus described, the boundary is established on the right banks of the Tinto and Motagua rivers at mean high water mark, and in the event of changes in these streams in the course of time, whether due to accretion, erosion or avulsion, the boundary shall follow the mean high water mark upon the actual right banks of both rivers.

Upon receipt of notice of the award, the Foreign Offices of Guatemala and Honduras exchanged messages expressing the hope that, now that their boundary problem was amicably settled, a new era of friendship and cordial relations might begin between the sister republics. Following the arbitral decision the technical commission, with Sidney H. Birdseye of Washington [104] (who had been in charge of the aerial survey) as neutral member and chief, completed actual demarcation of the line between April 24, 1933, and September 7, 1936,[105] erecting 1,028 monuments along 255.6 kilometers (158.8 miles). Thus the territory so long in dispute, about two thousand square miles between the Motagua River and the Merendon Mountains, was in effect divided according to the line of present possession, giving control of the Tinto and Motagua rivers to Guatemala, and leaving Omoa and the Cuyamel area to Honduras. It may be expected that this solution of the century-old controversy, finally so elaborately stage-set and attained, will be permanent.

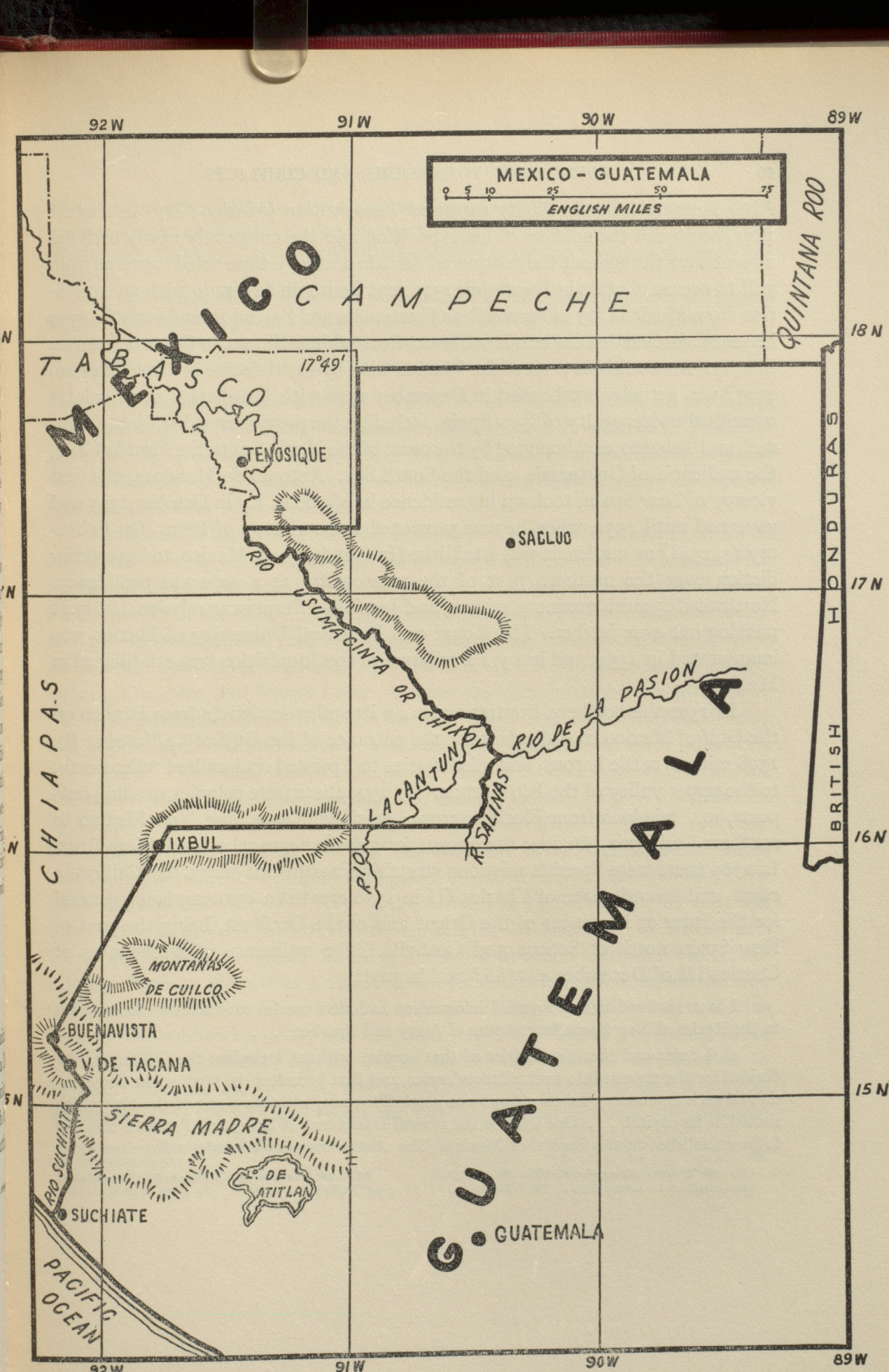
5. Guatemala–Mexico

Mexico

Authorities seem now generally agreed that the Aztecs, settlers in Mexico from 1325 or earlier, at the greatest extent of their dominion under Montezuma II as overlord of the league, about 1519, controlled the land from the Gulf of Mexico across to the Pacific Ocean and from the Pánuco River at Tampico in the north to the Isthmus of Tehuantepec and even to Yucatan and Guatemala in the south.

[104] See Sec. 6, Note 27, this chap., *infra*.

[105] *Geog. Rev.*, XXVIII (1938), 681. *Bull. Pan Amer. Union*, LXIX (1935), 700.


MEXICO - GUATEMALA
0 5 10 25 50 75
ENGLISH MILES
92 W
91 W
90 W
89 W
18 N
17 N
16 N
15 N
MEXICO
CAMPECHE
QUINTANA ROO
TABASCO
17°49'
TENOSIQUE
SACLUC
RIO USUMACINTA OR CHIXOY
RIO DE LA PASION
LACANTUN
R. SALINAS
RIO
IXBUL
CHIAPAS
HONDURAS
BRITISH
GUATEMALA
MONTANAS DE CUILCO
BUENAVISTA
V. DE TACANA
SIERRA MADRE
L. DE ATITLAN
RIO SUCHIATE
SUCHIATE
GUATEMALA
PACIFIC OCEAN

After Hernando Cortéz finally captured Tenochtitlan (Mexico City) in August 1521, he spread the soldiers of his expedition and the constantly newly arriving adventurers throughout the conquered domain and for a time ruled supreme from gulf to ocean. Cortéz in December 1523 sent Pedro de Alvarado with an expedition from Mexico City as far south as Guatemala and Salvador; and early in 1524 he sent Cristóbal de Olid into Honduras. Cortéz himself went to Central America in 1525. An audiencia created for Mexico City by royal decree of November 29, 1527,[1] was actually established in December 1528 with jurisdiction then or later over all the viceroyalty of New Spain, including the provinces of Yucatan, Cozumel, and Tabasco, and bounded by the coast of the North Sea to the Florida Cape, the audiencia of Guatemala, and the South Sea. Antonio de Mendoza, the first viceroy of New Spain, took up his residence in Mexico City in October 1535 and governed until 1551, when he was promoted to be viceroy of Peru. On February 13, 1548,[2] an audiencia was established in Guadalajara, Mexico, to have jurisdiction over the northern part of the viceroyalty, as a separate presidency. Northward Spanish mariners, miners, and Jesuit and Franciscan missionaries kept pushing out ever farther. The Royal and Pontifical University of Mexico was inaugurated in 1553, and in 1571 a tribunal of the Inquisition was established in Mexico.

In 1590 the northern frontier ran in an irregular semicircle from Pánuco on the Gulf of Mexico to Culiacán near the entrance of the Gulf of California. By 1598 miners, cattle barons, and missionaries had pushed six hundred miles north, to the upper valley of the Río Grande. By 1700 there were colonies, trading outposts, and missions from Florida across Louisiana, Texas, and New Mexico to southern California. In 1735 there was a formidable negro rebellion in Vera Cruz. In 1769 there were Spanish missions stretching northward along the California coast, and an ordinance of Charles III in 1776 created a commandancy-general for the Interior Provinces of the Orient and of the Occident, being the part of New Spain north of Sonora and Coahuila. The ordinance of intendentes of Charles III of December 4, 1786,[3] said in part:

> I have resolved on well founded information and after careful consideration to establish in the Realm of New Spain Intendentes of Army and Province. . . .
>
> 1. I command that the district of that empire, without including the Californias, be divided for the present into twelve Intendencies, and that hereafter the territory or demarcation of each Intendency be considered one single Province, with the name of the city which should be its capital. . . . One shall be the general Intendency of Army and Province which is to be established in the Capital of Mexico. The other eleven shall be of Province only and

[1] *Recopilación de las Indias*, Libro II, Titulo XV, Ley 3.
[2] *Recopilación de las Indias*, Libro II, Titulo XV, Ley 7.
[3] *Teatro de la Leg. Univ. de España é Indias* (Pérez, Madrid, 1797), XVII, 76.

shall be in the City of [Puebla de los Angeles, Nueva Veracruz, Mérida de Yucatan, Antequera de Oaxaca, Valladolid de Mechoacan, Santa Fé de Guanaxuato, San Luis Potosí, Guadalaxara, Zacatecas, Durango and Arispe, extended to the two Provinces of Sonora and Sinaloa].

2. The Viceroy of New Spain shall continue with all the superior authority and general powers which my royal patent and instruction and the Laws of the Indies give him.

10. The political and military Governments of Yucatan, Tabasco, Veracruz, Acapulco, Nuevo León, Nuevo Santander, Coahuila, Texas and Nuevo Mexico shall continue.

Following Napoleon's deposition of Charles IV of Spain in 1808, an ambitious creole minority in New Spain demanded a share in local government. The fifty-sixth viceroy, José de Iturrigaray, gave them some encouragement and proposed the convocation of a national congress, whereupon the wealthy autocrats deposed him and took over the government.

The Mexican Congress under the leadership of José María Morelos, which on November 6, 1813, at Chilpancingo issued a declaration of independence from Spain and on October 22, 1814, at Apatzingan published a constitutional decree for the liberty of Mexican America, purported (Article 42) to represent the seventeen provinces of Mexico, Puebla, Tlaxcala, Vera Cruz, Yucatan, Oaxaca, Técpan, Michoacan, Querétaro, Guadalaxara, Guanaxuato, Potosí, Zacatecas, Durango, Sonora, Coahuila, and Nuevo León. In 1820 the liberal Spanish constitution of 1812 was proclaimed in Mexico, and the high clergy and the aristocrats, fearing loss of privileges, disestablishment, and other reforms, resolved upon separation from Spain. The conservatives induced the Viceroy to send Agustín de Iturbide, a creole ex-officer of the Spanish army, into the field against the rebel guerrillas led by Vicente Guerrero. Iturbide proclaimed with Guerrero on February 24, 1821,[4] the Plan of Iguala, calling for the establishment of an independent limited monarchy and equality of rights for Spaniards and creoles. Juan O'Donojú, the sixty-first and last viceroy of New Spain, arrived at Vera Cruz in July 1821 but was unable to proceed inland, and recognized the independence of Mexico in a treaty at Córdoba on August 24, 1821,[5] according to which Fernando VII was to rule the Mexican Empire as a moderate constitutional monarch, under the title of emperor, with his court and capital in Mexico City. Iturbide entered Mexico City on September 27, 1821, and the next day a provisional governing Junta named by him appointed a regency of five, with him as president, for the Mexican Empire. On May 18, 1822, he was proclaimed emperor, as Agustín I; and in September 1822 the principal towns and cities of Central America were declared

[4] *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 387.

[5] *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 384. 8 *British and Foreign State Papers* 1238; 9 *ibid.* 394–405, 416–441, 799–804; 10 *ibid.* 1023–1028, 1069–1076; 11 *ibid.* 246; 13 *ibid.* 415. *American State Papers, For. Rel.* (Washington, 1834), IV, 836.

part of the empire. The United States was the first to recognize the new nation of Mexico, by receiving her minister on December 12, 1822. Iturbide abdicated on March 19, 1823, and a federal form of government was adopted June 12, 1824. From November 4, 1822, to July 1, 1823, Mexico included at least nominally the six Central American provinces, and the empire then stretched from gulf to ocean and from 42° N latitude (northern boundary of the present state of California) to the Isthmus of Panama. The Mexican Congress by decree of August 20, 1824,[6] recognized the independence of the United Provinces of Central America, expressly not including Chiapas, which on September 12, 1824, after a plebiscite was declared annexed to Mexico.

A constituent Congress on October 4, 1824,[7] promulgated a second constitution for the United Mexican States (nineteen states, four territories, one federal district) which provided:

> Art. 2. [The Mexican nation's] territory comprises all that was formerly called the Viceroyalty of New Spain, that known under the title of the Captaincy-General of Yucatan, that of the governments then called the interior Provinces of the Orient and the Occident, and that of upper and lower California, with the annexed lands and the adjacent islands on both seas. A demarcation of the boundaries of the confederation shall be made by a constitutional law as soon as circumstances permit.

Mexico signed with the republics of Colombia, Peru, and Central America at Panama on July 15, 1826,[8] a treaty of union, league, and perpetual confederation against all foreign domination and a convention, upon contingencies, for military coöperation, which were never ratified. In 1828 Ferdinand VII sent an army under General Isidro Barradas from Cuba to reconquer Mexico; but after capturing Tampico, the expedition was defeated by General Santa Ana in September 1829 and obliged to surrender. Mexico signed with the Federal Republic of Central America at Guatemala City on April 18, 1832,[9] a treaty of peace and perpetual friendship which agreed that any differences between them should be terminated by amicable means or by the arbitration of a friendly nation; but the treaty was never ratified. Spain acknowledged the independence of Mexico, the first nation from the former Spanish colonies to be thus favored, by a treaty signed at Madrid, December 28, 1836,[10] in which Queen Cristina as Regent for Isabella II recognized

> Art. 1. . . . as a free, sovereign and independent nation the Mexican Republic, composed of the states and countries specified in its constitutional law, to wit: the territory com-

[6] *Leyes, Decr. y Ord. que Forman el Der. Int. Mexicano* (Mexico, 1879), III, 82.

[7] 13 *British and Foreign State Papers* 695–725.

[8] *Trats. y Convs. Celebrados y no Ratificados por la Rep. Mexicana* (Mexico, 1878), 181, 190. "El Congreso de Panama y Algunos Otros Proyectos de Unión Hisp.-Amer.," *Arch. Hist. Dipl. Mex.* (Mexico City, 1926), Num. 19.

[9] *Trats. y Convs. Celebrados y no Ratificados por la Rep. Mexicana* (Mexico, 1878), 230.

[10] *Trats. y Convs. Concluidos y Ratificados por la Rep.*

prised in the viceroyalty formerly called New Spain, that which was called the Captaincy General of Yucatan, that of the Commandancies formerly called the Interior Provinces of Oriente and Occidente, that of Lower and Upper California and the annexed lands and adjacent islands in both seas of which the said Republic is actually in possession [and renounced] . . . all pretension to government, ownership and territorial rights over said states and countries.

The third constitution of December 15, 1835, and the seven constitutional laws, promulgated December 30, 1836, included no description of the national territory.

In June 1838, France, in an endeavor to collect certain damage claims for expulsion of some of her citizens, declared war on Mexico,[11] and after proclaiming a blockade of all Mexican ports, bombarding the fortress of San Juan de Ulúa on November 27, and temporarily occupying Vera Cruz, made peace on March 9, 1839.[12] The department of Yucatan [13] revolted under Governor Santiago Méndez on March 31, 1841, and set up as a free and sovereign state, but was unable to maintain itself separately and on December 14, 1843,[14] by conventions signed at Mexico City was reincorporated in the Mexican Republic. By a decree of September 11, 1842,[15] after a military expedition sent by President Antonio López de Santa Ana, the district of Soconusco was declared annexed to the department of Chiapas, Mexico, eliciting strong Guatemalan protests. The (fourth) Organic Bases for the Mexican Republic, sanctioned by the strongly centralist National Legislative Junta under General Santa Ana, as provisional President, on June 12, 1843,[16] provided:

Art. 2. The territory of the Republic comprises that which was formerly the viceroyalty of New Spain, the captaincy general of Yucatan, the commandancies of the former interior provinces of Oriente and Occidente, lower and upper California, and Chiapas, with the annexed lands and adjacent islands in both seas.

Texas [17] declared its independence on March 2, 1836, and its admission to the United States on December 29, 1845, resulted in the Mexican War from May 1846 to September 13, 1847. Yucatan on January 1, 1846,[18] again attempted to become independent of Mexico and to remain neutral in the war with the United States, but the United States declined to recognize her as a sovereign state,

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Mexicana (Mexico, 1878), 396. *Trats. de España* (Cantillo, Madrid, 1843), 874. 24 *British and Foreign State Papers* 864. Lucas Alamán; *Arch. Hist. Dipl. Mex.* (Mexico City, 1924), Num. 7. "El Tratado de Paz con España," *ibid.* (Mexico City, 1927), Num. 22.

[11] *Col. de Leyes, Año de 1838* (Mexico, 1846), 94. 26 *British and Foreign State Papers* 725–728, 897, 1099, 1123, 1372; 27 *ibid.* 196–199, 1176–1214; 29 *ibid.* 222–227. "La Primera Guerra entre Mexico y Francia," *Arch. Hist. Dipl. Mex.* (Mexico City, 1927), Num. 23.

[12] *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 415.

[13] From the time of its first general districting law, May 24, 1837, the department of Yucatan was composed of the five districts or prefectures of Mérida, Campeche, Valladolid, Izamal, and Tekax. 51 *British and Foreign State Papers* 1111–1137.

[14] *Leyes, Decr. y Ord. que Forman el Der. Int. Mexicano* (Mexico, 1879), III, 1165. 51 *British and Foreign State Papers* 1271.

[15] *El Observador Judicial* (Mexico City, 1842), II, 152.

[16] *Bases Org. de la Rep. Mex.* (Mexico City, 1843).

[17] See Sec. 16B, this chap., *infra.*

[18] *Dipl. Corr. of the U. S.* (Manning, Washington, 1937) VIII, 219, 974. 51 *British and Foreign State Papers* 1184–1237. *Gac. Of.* (Guatemala, 1846), II, 112.

and occupied the Port of Laguna and the Island of Carmen from December 21, 1846, until the end of the war. Governor Méndez on March 25, 1848,[19] offered the dominion and sovereignty of Yucatan to the United States, as he said he would to Spain and Great Britain, but for various reasons he found no takers. The second constitution of 1824 was amended and restored on August 5, 1846, without change in Article 2.

The fifth constitution of February 5, 1857,[20] definitely establishing a federal republic, provided:

Art. 42. The national territory comprises the integral parts of the Federation and the adjacent islands in both seas.

Art. 43. The integral parts of the Federation are: the States of . . . Campeche, Coahuila, Chiapas, Chihuahua, . . . Nuevo León, . . . Sonora, Tabasco, Tamaulipas, . . . and the Territory of Baja California.

Chief Justice Benito Pablo Juárez, head of the Conservatives, at Vera Cruz, succeeded in obtaining recognition from the United States in April 1859 and, after entering Mexico City as president on January 11, 1861, attempted to settle some of the pending foreign claims. The attitude of the Mexican Congress was so adverse that France and Spain broke off diplomatic relations, and signed with Great Britain at London on October 31, 1861,[21] a convention for joint intervention in Mexico. Spain occupied Vera Cruz in December, the French fleet with troops arrived soon after, to seize the Gulf ports, and Great Britain sent ships and landed seven hundred marines.[22] The French showed a disposition to interfere in Mexican domestic politics, and the British and Spanish withdrew on April 1862. France twice sent more troops and on June 7, 1863, took Mexico City.[23]

On July 10, 1863, Napoleon III bestowed the crown of Mexico on Grand Duke Ferdinand Maximilian of Austria, who reached Mexico City, June 12, 1864. Emperor Maximilian sent an imperial deputy to govern for him the Peninsula of Yucatan, and in his decree of September 19, 1864,[24] the deputy described his territory as bounded:

Art. 1, Subd. 1. . . . up the center of the river Usumacinta or its deepest tributary, to meet the boundary of the Empire with the Republic of Guatemala. From that point the

[19] *Dipl. Corr. of the U. S.* (Manning, Washington, 1937), VIII, 1073.

[20] As amended through May 14, 1901. Added: Campeche, April 29, 1863, and Coahuila, Nov. 20, 1868. 47 *British and Foreign State Papers* 1067; 69 *ibid.* 601; 78 *ibid.* 979. The States of Tamaulipas, Nuevo León. Coahuila, Chihuahua, and Sonora, and the Territory of Baja California were on the north, adjoining the United States, and the states of Campeche, Tabasco, and Chiapas were on the southeast, adjoining Guatemala.

[21] *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 692. *U. S. For. Rel.*, 1862, pp. 377, 729–774. 51 *British and Foreign State Papers* 63.

[22] 51 *British and Foreign State Papers* 548–636; 53 *ibid.* 376–602. Martens, *Nouv. Rec. Gén. de Traités*, XVII (1869), II, 147.

[23] 52 *British and Foreign State Papers* 487; 53 *ibid.* 350; 54 *ibid.* 538, 542, 944; 55 *ibid.* 451; 56 *ibid.* 232. *Rev. de Der. Int. y Pol. Ext.* (Madrid, 1909), IV, 97 at 105. "El Tratado Mon-Almonte." *Arch. Hist. Dipl. Mex.* (Mexico City, 1925), Num. 13. "Comentarios de Francisco Zarco sobre la Intervención Francesa," *ibid.* (Mexico City, 1929), Num. 30.

[24] *Col. de Leyes . . . del Estado de Yucatan* (Mérida, 1884), III, 98.

boundary line runs eastward with the aforesaid Republic of Guatemala, the Lacandones tribes remaining within the Empire. The boundary will follow the necessary bends and directions of that line, and leaving for the Empire the territory of Petén will continue in the same manner until it encounters the river Sarstun.

This claim to Petén, in the northwest corner of Guatemala, adjoining the Mexican states of Campeche, Tabasco, and Chiapas, does not seem then to have troubled Guatemala, and probably lapsed with the fall of Maximilian on May 15, 1867. The rest of the deputy's line concerns rather Mexico's dispute with Great Britain over British Honduras.[25]

An amendment of November 24, 1902,[26] changed the last part of Article 43 of the 1857 constitution to read:

. . . the territory of Baja California . . . and that of Quintana Roo . . . formed by the eastern portion of the peninsula of Yucatán [and] . . . bounded by a line which . . . goes southward to the parallel dividing the Republics of Mexico and of Guatemala.

José de la Cruz Porfirio Díaz ruled as constitutional president and dictator from December 1876 to May 25, 1911,[27] when he was overthrown by Francisco I. Madero and retired to Paris, where he died July 2, 1915. Victoriano Huerta led a conservative counter-revolution to success and became president on February 19, 1913. He probably connived at the shooting of Madero and Vice President Pino Suárez, and for this and because he had come to power by a revolution, President Woodrow Wilson refused to have the United States recognize his government. At Tampico on April 9, 1914,[28] Colonel Ramón H. Hinojosa with a squad of Mexican soldiers arrested a paymaster and seven men of the U. S. S. *Dolphin* and marched them two blocks through the streets, then back to their boat and in less than an hour released them. When Rear Admiral Henry T. Mayo instantly demanded an official apology and a salute to the United States flag, Huerta refused and suggested the question be placed before the Hague Tribunal. The seven United States battleships *Arkansas*, *Florida*, *New Hampshire*, *New Jersey*, *South Carolina*, *Utah*, and *Vermont*, the transport *Prairie*, and the collier *Orion* promptly arrived off Vera Cruz, and on April 21 and 22 shelled the city, landed marines and sailors, and seized the Customs House. The United States navy turned Vera Cruz over to the army on April 30, and they occupied the port until November 23, 1914, but refrained from proceeding inland. A tender of good offices as mediators by Argentina, Brazil, and Chile on April 25

[25] See Sec. 10, this chap., *infra*.

[26] Decree 1196. *Recop. de Leyes* (Mexico, 1906), LXXVIII, 1211. *Diario Of.*, LXIII, Num. 20 (Nov. 24, 1902). 52 *British and Foreign State Papers* 237–429, 487, 490; 53 *ibid.* 376–602; 56 *ibid.* 7.

[27] Manuel González was titular President from Dec. 1, 1880 to Dec. 1, 1884.

[28] *U. S. For. Rel.*, 1914, pp. 448–483. *Amer. J. Int. Law*, VIII (1914), 579, 860; IX (1915), 147; XI (1917), 399; XIII (1919), 557; XIX (1925), 301; XXXI (1937), 651.

was accepted by both nations,[29] and a conference held at Niagara Falls, Ontario, Canada, from May 20 to June 30 tried to pick a provisional president for Mexico, but without success, until Huerta was finally forced by internal political and financial troubles to resign on July 14, 1914. Mexico declared her neutrality in the World War on August 5 and September 25, 1914. General Francisco Villa, a semi-revolutionary bandit in control of a large part of northern Mexico, on March 9, 1916, with four or five hundred men, led a raid on Columbus, New Mexico, in which seventeen United States citizens were killed. President Wilson on March 17[30] sent Brigadier General John J. Pershing at the head of twelve thousand troops in pursuit of Villa, and his cavalry eventually got as far south as Carrizal but was unable to catch Villa. After skirmishes at Parral on June 21 and elsewhere with the government forces of President Venustiano Carranza, in which a few United States soldiers were killed and a score captured, the expedition was withdrawn on February 5, 1917.

The sixth constitution of January 31, 1917,[31] in effect May 1, 1917, provided:

> Art. 27. Property in the lands and waters included within the limits of the national territory belongs originally to the Nation, which had and has the right to transfer ownership of them to individuals, creating private property. Expropriation may be made only for reasons of public utility and against [mediante] indemnization. . . . Direct ownership of all minerals [including precious stones, salt, phosphates and petroleum] belongs to the Nation. . . . The waters of the territorial seas, to such extent as international law determines, [lakes, estuaries, principal interstate rivers and boundary streams] are also the property of the Nation. . . . [As to minerals and public waters] the ownership of the Nation is inalienable and imprescriptible. . . . All contracts and concessions made by previous Governments since 1876 which have resulted in the monopolizing of lands, waters and natural resources of the nation by one person or association are declared subject to revision, and the Executive is authorized to declare them null when they involve grave prejudice to the public interest.
>
> Art. 42. The national territory comprises the integral parts of the Federation and the adjacent islands in both oceans. It likewise comprises the Island of Guadalupe, those of Revillagigedo, and that of La Pasión, situated in the Pacific Ocean.
>
> Art. 43. The integral parts of the Federation are: the States of . . . Campeche, Coahuila, . . . Chiapas, Chihuahua, . . . Nuevo León, . . . Sonora, Tabasco, Tamaulipas, . . . the Territory of Baja California and the Territory of Quintana Roo.
>
> Art. 45. The States and Territories of the Federation shall keep the extent and boundaries which they have had until now, provided there is no difficulty with regard to them.
>
> Art. 48. The islands in both oceans embraced within the national territory shall depend directly on the Federal Government, excepting those over which the States have up to the present time exercised jurisdiction.

[29] *U. S. For. Rel.*, 1914, pp. 488–556.
[30] *Amer. J. Int. Law*, X (1916), 337; XI (1917), 399.
[31] 111 *British and Foreign State Papers* 778; 132 *ibid.* I, 928.

Survey of Int. Affairs, 1925 (London, 1928), II, 452–456. *U. S. For. Rel.*, 1917, pp. 946–1002.

Under Article 27 President Venustiano Carranza in 1917–18 issued various decrees [32] imposing restrictions and difficulties on the American, British, and Dutch oil companies, which immediately protested vigorously, directly and through the Foreign Offices of their countries.[33] On August 30, 1921,[34] the Supreme Court held that Article 27 was not retroactive and did not apply to concessions obtained before May 1, 1917, as to which intention to maintain had been shown by positive acts. The United States companies were still uneasy, and in 1923 the State Department secured through the Bucareli conferences the Warren-Bayne agreement, which promised certain protection. A new Petroleum Law of December 26, 1925,[35] purported to change titles in fee to prospective fields to fifty-year licenses to exploit, and forecast further trouble. Again the United States State Department intervened and obtained, in 1927, the Morrow-Calles agreement and on January 9, 1928, an amendment of the law.[36] The Supreme Court on November 17, 1927,[37] found the fifty-year limitation unconstitutional as to concessions obtained before May 1, 1917. On September 8, 1931, Mexico was admitted to the League of Nations, after the opposition caused by President Woodrow Wilson's dislike of the Huerta government had passed away. On December 14, 1931,[38] the territory of Quintana Roo was divided between the states of Yucatan and Campeche and the decree described the line as continuing "along the dividing line with Belize and Guatemala, to the present dividing line between the State of Campeche and the Territory of Quintana Roo." On December 14, 1932, Mexico gave provisional notice of her probable withdrawal from the League of Nations, but on May 5, 1934, withdrew the notice. By an amendment of January 10, 1934,[39] reference to La Pasión Island[40] was stricken out of Article 42 of the 1917 constitution, leaving specific mention only of the islands of Guadalupe and Revillagigedo;[41] and by another amendment on the same day[42] there was added to Article 45:

> The islands of Cozumel, Cancum, Mujeres, Blanca, Contoy, Holbox and the adjoining keys from La Ascensión Bay northward on the Caribbean Sea from the parallel 19°35′ remain subject to the jurisdiction of the State of Yucatan, and their superficial extent shall be considered included within the limits of the Federative Entity. The islets and adjacent keys situated from La Ascensión Bay southward on the Caribbean Sea from the parallel 19°35′ remain subject to the jurisdiction of the State of Campeche.

[32] *Legislación Petrolera*, 1783–1921 (Mexico, 1922); *ibid.* 1922 (Mexico, 1923), II.

[33] *U. S. For. Rel.*, 1916, pp. 741–775; 1917, pp. 1058–1072; 1918, pp. 687–792; 1919, II, 591–613; 1920, III, 200–226; 1921, II, 439–473; 1922, II, 692–708; 1923, II, 523–548.

[34] The Texas Company of Mexico, S. A., Sem. Jud. (5ª Ep. 1922), IX, 432. *U. S. For. Rel.*, 1921, II, 464–472.

[35] *Legislación Petrolera*, 1925 (Mexico, 1926), V, 51.

[36] *Legislación Petrolera*, 1928 (Mexico, 1929), VIII, 1.

[37] Matter of Mexican Petroleum Co., Sem. Jud. XXI, 1338.

[38] *Diario Of.*, LXIX, Num. 41 (Dec. 19, 1931). Baja California was divided into North and South Territories at the parallel of 28° N latitude, Jan. 22, 1931. *Diario Of.*, LXIV, Num. 31 (Feb. 7, 1931).

[39] *Diario Of.*, LXXXII, Num. 15, 205 (Jan. 18, 1934).

[40] Clipperton Island, awarded to France by 1931 Arbitral Award. See Chap. II, Sec. 4, *infra*.

[41] See Chap. II, Sec. 12, *infra*.

[42] *Diario Of.*, LXXXIII, Num. 19, 361 (March 22, 1934).

On January 11, 1935,[43] the territory of Quintana Roo was reconstituted with the same boundaries as when it was first created on November 24, 1902. On March 18, 1938,[44] President Lázaro Cárdenas, issued a decree expropriating for the nation the property of seventeen named American and British owned oil companies, with provisions for payment to the owners of the adjudicated value within ten years. This was claimed by the companies to be the culmination of a labor campaign against them, and the United States and Great Britain put in sharp protests on behalf of their nationals.[45] There were lengthy negotiations, with Donald R. Richberg representing the United States companies, and in August 1938 Assistant Secretary of State Sumner Welles announced that in view of the 1917 Mexican constitutional provision the United States companies would probably be willing to accept a reduction of their concessions to fifty-year leases, but wanted a voice in the management of the properties, as by a minority representation on the board of directors of each company. This caused the conferences to be suspended by Mexico for a time. In November 1938 [46] the United States announced that it had obtained an agreement for appraisal of the properties, claimed to be worth more than $400,000,000, and payment in full by installments over five years. In December 1938 the properties of twelve more United States oil companies and subsidiaries were added to the list. In August 1938 [47] international arbitration of the question of immediate payment for some $10,000,000 of agrarian properties owned by United States citizens and expropriated since August 30, 1927, by the Mexican government under Article 27 of the 1917 constitution was proposed by the United States and rejected by Mexico. On December 2, 1939,[48] the Supreme Court upheld the decree of March 18, 1938, and decided that until it was reduced to possession the petroleum in the subsoil belonged to the nation and not to the private companies. On February 28, 1940, a presidential decree declared forfeited to the nation (for a defect in title in 1886) 1,500,000 acres of land operated by three United States companies producing chicle in the state of Chiapas. On April 3 Secretary Hull proposed to submit the two-year-old oil expropriation dispute to arbitration, and on May 1, 1940, Foreign Minister General Eduardo Hay replied for the Cárdenas government, flatly refusing, on the gound that the dispute was a domestic question not subject

[43] *Diario Of.*, LXXXVIII, Num. 14 (Jan. 16, 1935).

[44] *Diario Of.*, CVII, Num. 17 (March 19, 1938).

[45] *Int. Aff.*, XVII (1938), 769. *Amer. J. Int. Law*, XXXII (1938), 519. *Ann. Amer. Acad. Pol. & Soc. Sci.* CXXXII, 164, 168, 172, 176, 180, 185. *For. Aff.*, V (1927), 357; IX (1931), 665. *Amer. J. Int. Law*, XXI (1927), 685; XXIII (1929), 30. *Survey of Int. Affairs*, 1925 (London, 1928), II, 416–424; *ibid.* 1927 (London, 1929), 455–470; *ibid.* 1930 (London, 1931), 393–397. *U. S. Law Review* (1938), LXXII, 322. *Int. Concil.*, CCCXLV (1938), 491, 511. *Current History* (Feb. 1938), XLVIII, 14; (June, 1938), 12. *Rev. de Der. Int.* (Paris, 1938), XXI, 518. Published by Standard Oil Co. (N. J.): *Mexico, Labor Controversy* (1936–38); Mexico, *Expropriation of Foreign-owned Oil Properties* (1938); *Present Status of the Mexican Oil "Expropriations"* (1940); *Denials of Justice* (1940); *The Reply to Mexico* (1940).

[46] *Amer. J. Int. Law*, XXXIII (1939), 108.

[47] *Amer. J. Int. Law*, XX (1926), 519; XXXII (1938), Supp., 181–207. *Int. Concil.*, CCCXLV, 521–558.

[48] Sem. Jud. 5ª Epoca (Mexico, 1940).

to international arbitration, and announcing a private and direct settlement with the Consolidated Oil (Sinclair) companies, accepting expropriation and leaving for discussion only the amount of indemnity and conditions of payment, in reasonable installments. It was agreed that $8,500,000 in cash in installments to end in 1942 and twenty million barrels of oil should be paid; the first installment of $1,000,000 was paid to the Consolidated Oil Company on May 18, and the second, also of $1,000,000, on June 30, 1940.

Mexico declared her neutrality in the Hitler war on September 4, 1939, and so notified the League of Nations on September 14, 1939. Mexico still cherishes the hope of an improved and profitable railroad across the 188-mile Isthmus of Tehuantepec, from Quetzalcoalco (Puerto Mexico) in the state of Vera Cruz on Campeche Bay to Salina Cruz in the state of Oaxaca on the Gulf of Tehuantepec; and on February 3, 1940, the government appointed a special commission of five to speed development, with the coöperation of United States shipping interests.

In the Gulf of Mexico various small islands were from time to time claimed by United States citizens under the Guano Islands Act of August 18, 1856, but were nearly all eventually recognized by the State Department as belonging to Mexico. The Alacrans Islands, at 22°25′ N latitude and 89°40′ W longitude, consisting of Chica, Pajoras, and Pérez islands, north of Yucatan, were claimed in 1879 and stricken from the United States list by Treasury Department circular of November 21, 1894. Arenas Key, at 22°07′10″ N latitude and 91°24′30″ W longitude, was also claimed about 1879, and stricken off in 1894.[49] Cayo Nuevo, Triangulo Este, and Triangulo Oeste at 20°54′ N latitude and 92°13′ W longitude,[50] and Cayo Arcas, farther to the south, in the Gulf of Campeche, have been sometimes treated by Mexico as part of the Arenas group. The islands of Blanca, Cancum, Cantoy, Cozumel,[51] Holbox, and Mujeres were all in April 1934 turned over by the Federal Government to the state of Yucatan. The Island of Carmen, across the mouth of Laguna de Términos, in the state of Campeche, was for a time a separate territory and an open port.[52] In the Pacific [53] there are numerous islands along the southwest coast of Mexico, besides Clipperton and the Revillagigedo group farther out. Guadalupe Island, at about 29° N latitude and 118°30′ W longitude, 200 miles west from the coast of Baja California, and 180 miles southwest of San Diego, California, is 20 miles long by 6 miles wide and is the steep top of an extinct volcano, 12,000 feet high, rising 4,500 feet above the surface of the sea. It seems to have been first definitely reported by the French

[49] Moore, *Dig. Int. Law* (Washington, 1906), I, 569, 570.
[50] Moore, *Dig. Int. Law* (Washington, 1906), I, 580.
[51] *Bull. Pan Amer. Union* (1915), XLI, 221.
[52] 45 *British and Foreign State Papers* 1313–1314.
[53] Map. *Nat. Geog. Mag.*, XLIV (1923), 73.

Admiral Dupetit-Thouars in 1837. Large herds of seals which frequented it were decimated from 1800 to 1830 and the few survivors completely exterminated in 1880–84, and now it is inhabited chiefly by wild goats,[54] left from a ranch experiment of about 1893, and burros, cats, and mice, survivors of garrison and ship importations. The island was made a government protected reservation on October 19, 1922, and a penal colony, as part of Baja California, on January 31, 1934.[55] San Martín is a small island at about 30°30′ N latitude and 116°05′ W longitude, close to the shore of Baja California, off San Quintin. Cedros Island, at about 28°15′ N latitude and 115°10′ W longitude, in the entrance to Sebastián Vizcaín Bay, is slightly larger than Guadalupe, but close to the coast and evidently fairly recently attached to it. Separated by a deep narrow channel, it has most of the small animals common on the adjacent peninsula, and is occupied only by a factory for abalone packing. The three small San Benito Islands — East, Middle, and West — at about 28°20′ N latitude and 115°30′ W longitude, lie fifteen miles west of Cedros and about two hundred miles southeast of San Diego, California. They are desert and produce chiefly fine cacti, as does Natividad, another small island, at about 27°50′ N latitude and 115° W longitude, eight miles south of Cedros, off Punta Eugenia. San Roque and Asunción, at about 27°10′ N latitude and 114°25′ W longitude, off Punta San Pablo, are small guano islands. Magdalena and Santa Margarita, at about 24°30′ N latitude and 112° W longitude, form the outer barrier to Magdalena Bay,[56] a magnificent harbor but without fresh water and backed by desert. They are separated from the mainland by narrow lagoons edged by mangrove swamps, and cacti flourish, but there is a herring oil and fertilizer factory on Santa Margarita. Las Tres Marías — María Madre, María Magdalena, and María Cleofas — in 21°30′ N latitude and 106°20′ W longitude, seventy-five miles west of San Blas in the state of Nayarit, on the mainland of Mexico, are used as a federal penal colony.

Boundary

The Spanish governed the present boundary area from non-interfering and widely separated capitals, from which approaches were so slow and settlement and possession so slight that there has been little of the historic overlapping jurisdiction along this line. Even the early inclusion in Mexico of Chiapas and the district of Soconusco, which Guatemala originally considered hers, she was ready to

[54] See García *v.* Gunn (1897), 119 Calif. 315, 51 Pac. 684.

[55] *Diario Of.*, XV, Num. 71 (Nov. 28, 1922); LXXXII, Num. 27, 421 (Feb. 1, 1934). *Bol. de la Sec. de Gob.* (Mexico, D.F. 1923), II (Num. 9), 343.

[56] U. S. Senate Resolution of Aug. 2, 1912, disapproving sale of concession to Japanese; Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 262.

discuss, and in 1832 signed a treaty for arbitration of the line by a friendly nation, which treaty Mexico refused to ratify. In 1854 Guatemala offered to release her rights over the state of Chiapas, including the district of Soconusco, without asking any indemnity, but Mexico then refused to recognize and pay either the debt of that state to the former captaincy-general of Guatemala or the value of public property taken over.[57] Various threats against Chiapas and especially Soconusco gained more or less popular support in Guatemala.[58] In 1874 there was a movement in Mexico for the annexation of the department of Petén. The suggestion was ardently opposed in Guatemala,[59] and the excitement and agitation gradually died out, but the incident gave rise to a discussion of bases for a delimitation agreement.[60] After correspondence and conferences Guatemala and Mexico signed at Mexico City on December 7, 1877,[61] a preliminary boundary convention (their first treaty of any sort since 1825) which proposed (Article 1) to make an examination of the frontier, (Article 2) by a mixed commission of twelve engineers, (Article 3) the line to be divided into two sections, (Article 4) from the Bar of Ocos to the mountain of Izbul, and (Article 5) from the mountain of Izbul to Bacalar in Yucatan, (Article 6) in eight months for the first section and six months for the second, to begin one month after the end of the first; (Article 8) to suspend for eight months pending boundary negotiations, and (Article 10) respect actual possessions; (Article 11) the convention to be ratified within three months. By a convention signed at Mexico City on May 24, 1878,[62] it was agreed to extend the period of three months fixed for ratification by Article 11 to September 30, 1878. By another convention signed at Mexico City on March 3, 1879,[63] the periods fixed in Article 6 were extended to December 31, 1879, and six months from February 1, 1880, and in Article 8 to December 31, 1879; but on December 10, 1880, Guatemala refused a further extension, when requested by Mexico, on the ground that the previous extension had expired before the work even on the first section of the line had been finished. On June 15, 1881,[64] Guatemala appealed to the United States to induce Mexico to stop specified alleged aggressions on Guatemalan territory; and after rumors that both governments

[57] Discussions between Manuel F. Pavon for Guatemala and Juan N. de Pereda for Mexico. "Bosquejo Hist. de la Agregación a Mexico de Chiapas y Soconusco," *Arch. Hist. Dipl. Mex.* (Mexico City, 1932), Num. 36.

[58] *Gac. de Guatemala* (Guatemala City, 1847), III, 132. *U. S. For. Rel.*, 1870, p. 446; 1874, pp. 174, 720, 755.

[59] *Las Fronteras entre Guatemala y Mexico* (Guatemala, 1874). *Cuestión de Límites entre Mexico y Guatemala* (Mexico, 1875). *U. S. For. Rel.*, 1875, pp. 133, 164.

[60] *Bosquejo Historico de la Agregación a México de Chiapas y Soconusco* (Mexico, 1877).

[61] By Minister Ramón Uriarte for Guatemala and Foreign Minister Ignacio I. Vallarta for Mexico. Six months in Article 8 changed to eight months by Mexican Senate on giving its approval, and agreed to by Guatemala. Ratified by Guatemala, April 26, 1878; ratified by Mexico, Jan. 24, 1878; ratifications exchanged at Guatemala City, July 4, 1878. *Leyes y Decrs.* (Mexico City, 1883), XXIX, 288. Ramón Uriarte, *La Convención de 7 de dic. de 1877* (Oaxaca, 1882; Guatemala, 1885). 70 *British and Foreign State Papers* 1175.

[62] *Leyes y Decrs.* (Mexico City, 1883), XXIX, 297.

[63] 70 *British and Foreign State Papers* 1182.

[64] Miguel Martínez, *Cuestión entre México y Guatemala* (Mexico, 1882). *U. S. For. Rel.*, 1881, pp. 104–111, 598–614, 766–817; 1882, pp. 43–51, 326–333.

were sending troops to the border, the United States [65] induced representatives of the two countries to agree at New York on August 12, 1882,[66] upon preliminary bases for a settlement, by Guatemala conceding Chiapas and Soconusco to Mexico.

Without needing to have recourse to any arbitration by the President of the United States, as provided in the preliminary bases (Article 4) in case of a disagreement, Guatemala and Mexico signed at Mexico City on September 27, 1882,[67] a boundary treaty which provided:

Art. 1. Guatemala renounces forever the rights which it considers it has to the territory of the State of Chiapas and its district of Soconusco and consequently considers said territory as an integral part of the United States of Mexico.

Art. 2. Mexico duly appreciates the conduct of Guatemala and recognizes that the motives which have inspired the preceding renunciation are as worthy as they are honorable, and declares that in similar circumstances Mexico would have agreed to an equal withdrawal. Guatemala, for her part, satisfied with this recognition and solemn declaration, will not ask indemnification of any sort on account of the foregoing stipulation.

Art. 3. The boundaries between the two nations shall be forever as follows: (1) The median line of the river Suchiate from a point in the [Pacific] sea three leagues from its mouth upstream by the deepest channel to the point at which said river cuts the vertical plane which passes through the highest point of the volcano of Tacaná and is 25 meters distant from the southernmost pillar of the customs post of Talquian, so that such customs post remains in Guatemalan territory. (2) The line determined by the vertical plane previously defined, from its meeting with the river Suchiate to its intersection with the vertical plane which passes through the summits of Buenavista and Ixbul. (3) The line determined by the vertical plane which passes through the summit of Buenavista, already astronomically fixed by the Mexican Scientific Commission, and the summit of the mountain of Ixbul from its intersection with the former plane to a point 4 kilometers [2.5 miles] beyond said mountain. (4) The parallel of latitude which passes through this last point, from such point eastward until it meets the deepest channel of the river Usumacinta, or of the Chixoy, in case such parallel does not meet the former of said rivers. (5) The median line of the deepest channel of the Usumacinta or of the Chixoy and then of the Usumacinta, continuing by this or the other from the meeting of one or the other river with the said parallel until the deepest channel of the Usumacinta meets the parallel situated 25 kilometers [15.5 miles] south of Tenosique in Tabasco, measured from the center of the plaza of said town. (6) The parallel of latitude just referred to from its intersection with the deepest channel of the Usumacinta until it meets the meridian which passes at one third the distance between the centers of the plazas of Tenosique and Sacluc, counting such third part from Tenosique. (7) This meridian, from its intersection with the previous

[65] Boundary between Mexico and Guatemala. H. Exec. Dec. Ser. 154. 48th Cong., 1st Sess. (Washington, May 6, 1884), XXVII, Ser. 2207.

[66] *Cuestión de Límites entre México y Guatemala* (Mexico, 1883). *Manifestaciones de . . . Chiapas* (Mexico, 1882). "*X.Y.Z.*" *Límites con Méjico* (Guatemala, 1889). *U. S. For. Rel.*, 1882, pp. 437–441. 73 *British and Foreign State Papers* 272.

[67] Ratified by Guatemala, Dec. 29, 1882; ratified by Mexico, Jan. 4, 1883; ratifications exchanged at Mexico City, May 1, 1883. *Trats. y Conv. Vig.* (Mexico, 1909), I, 473; *ibid.* (Mexico, 1930), I, 465. *Mem. de Rels. Ext.* (Mexico, 1885), 52–107. *U. S. For. Rel.*, 1882, pp. 648–651. 73 *British and Foreign State Papers* 273. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIII (1888), 670.

parallel to latitude 17°49′. (8) The parallel of 17°49′ from its intersection with the previous meridian indefinitely eastward [120.5 miles to British Honduras].

Art. 4. [Monuments shall be set on this line by Scientific Commissions to be appointed by each Government, the work to be completed in two years from the date of the first meeting.]

A protocol signed at Mexico City on September 14, 1883,[68] provided for the organization and proceedings of the commissions called for by Article 4 of the 1882 boundary treaty, (Article 2) to meet in Unión Juárez on November 1, 1883, and begin work at the southern end of the line, (Articles 3, 4) surveying and (Article 5) erecting pyramidal masonry or stone landmarks, (Article 7) so that each may be seen from the next in both directions. By nine successive conventions [69] it was agreed to extend, finally to May 5, 1899, the period fixed in Article 4 of the 1882 boundary treaty for the termination of the work of the boundary commission. The two nations signed at Mexico City on April 1, 1895,[70] a convention for the settlement of the difficulties caused by the exercise of acts of sovereignty by Guatemala within the territory west of the river Lacantum, which provided:

Art. 1. Guatemala declares, as it has already done previously, that under the conviction of making use of its rights, it has exercised acts of sovereignty within the territory extending to the west of the river Lacantum, and therefore it has not been its intention to offend Mexico by so doing.

Art. 2. [Guatemala will, nevertheless, indemnify those injured by its agents for property and damages, in amounts to be fixed by an Arbitrator.]

Art. 3. [Mexico will not ask for the expenses it has incurred in the mobilization of troops and other warlike preparations on account of the occupation of the wood-cutting establishments to the west of the river Lacantum by agents of the Guatemalan Government.]

Art. 4. Guatemala consents to Mexico at once occupying the territory that extends to the west of the rivers Chixoy and Usumacinta; and Mexico for its part agrees that the true meaning of the Boundary Treaty of Sept. 27, 1882, in accordance with better data, is that for the line of division between the two countries, as to the region between the rivers Chixoy and La Pasión there shall be definitely fixed the parallel of latitude which, as set forth in said

[68] By Manuel Herrera (hijo) for Guatemala and José Fernández for Mexico. 74 *British and Foreign State Papers* 52.

[69] At Guatemala City, June 8, 1885 for one year (from Nov. 1, 1885): Martens, *Nouv. Rec. Gén de Traités*, 2e Sér., XIII (1888), 680. At Mexico City, Oct. 16, 1886, for two years to Oct. 31, 1888: *U. S. For. Rel.*, 1887, p. 735; 77 *British and Foreign State Papers* 479; Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XVIII (1893), 749. At Guatemala City, Oct. 22, 1888 for two years to Oct. 31, 1890: Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XVIII (1893), 754. At Mexico City, Oct. 20, 1890 for two years to Oct. 31, 1892: Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XVIII (1893), 775. At Mexico City, Oct. 18, 1892 for two years to Oct. 31, 1894. At Guatemala City, July 10, 1894 for one year from May 7, 1895: *Recop. de las Leyes* (Guatemala), XIV, 9. *Leyes y Decrs.* (Mexico City, 1895), LXIV, 247. At Guatemala City, March 16, 1896 for eighteen months from May 6, 1896: *Recop. de las Leyes* (Guatemala), XV, 60. At Guatemala City, Oct. 6, 1897 for six months from Nov. 5, 1897: *Anuario de Leg.* (Mexico, 1897), 277; *Bol. Of. de la Sec. de Rels. Ext.* (Mexico, 1898), VI, 330. At Mexico City, May 17, 1898 for one year to May 5, 1899: *U. S. For. Rel.*, 1899, p. 501.

[70] Ratified by Guatemala, April 26, 1895, ratified by Mexico (Decr. 56), May 6, 1895; ratifications exchanged at Mexico City, May 15, 1895. *Recop de las Leyes* (Guatemala), XIV, 10. *Leyes y Decrs.* (Mexico City, 1895), LXIV, 117. *Cuestiónes entre Guatemala y Méjico* (Guatemala, 1895). *Correspondencia Official con Motivo de Invasiones de Guatemala* (Mexico, 1895). *U. S. For. Rel.*, 1887, pp. 129–133, 142–148; 1895, II, 766–771, 979–994. 87 *British and Foreign State Papers* 528. *Rev. de dr. int. et de lég. comp.*, IV (1902), 625. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXIV (1907), 347.

Treaty, passes through a point 4 kilometers [2.5 miles] beyond the mountain of Ixbul, thence in an easterly direction until it strikes the river Chixoy, where it will terminate, according to what Guatemala has contended; following the median line of the deepest channel of this last named river, and afterwards of the Usumacinta, up to the parallel situated at 25 kilometers [15.5 miles] to the south of Tenosique, in Tabasco, measured from the plaza of that town.

Art. 5. Both parties accept the division of the differences in the remaining lines already made by the respective Boundary Commissions; that is, from the intersection of the Usumacinta with the second of said parallels forward, as the dividing line is described in the Treaty, provided that such differences do not exceed 200 meters [656 feet]. Otherwise, the lines shall be rectified by common consent by the Scientific Commissions appointed under Article 4 of that Treaty. If these Commissions should not come to an agreement, the dispute shall be submitted to a qualified arbitrator.

Art. 6. The geographical positions of the rivers Chixoy and Usumacinta shall be located as follows: that of the Chixoy from its intersection with the first parallel of those referred to in Article 4 of the present Convention, up to the point where it unites with the river La Pasión to form the Usumacinta; and that of the latter river from that point up to where it strikes the second of said parallels; setting up besides the landmarks that may be wanting; the whole in accordance with the arrangement entered into between Señores José Fernández and Manuel Herrera on Sept. 14, 1883.

The heads of the two boundary commissions signed at Puebla on April 2, 1899,[71] a convention agreeing on the first sheet of the map of the (southwest end of the) dividing line covering 16°45′ to 14°28′ N latitude and 91°19′ to 92°39′ W longitude, and adjourned finally in May 1899. A new Mexican commission under Engineer Manuel E. Pastrana finished some calculations and maps and had begun a complete report when it terminated in February 1902. The final report including a full history of the boundary negotiations was not completed until many years later.[72]

The scientific commissions from September 1878 to May 1899 struggled through sparsely settled regions with poor roads, virgin forests with none, over swamps and mountains, sometimes with a scarcity of food, fighting the climate, fevers, insects, and reptiles. The boundary, now monumented for its entire length of 962 kilometers (597.4 miles), in its nine courses follows the median lines of three rivers, two geodesic lines, three parallels, and one meridian. By accepting as an accomplished, if unwelcome, fact an early loss of claimed territory, the smaller nation avoided interminable diplomatic and political arguments with her larger neighbor and in the end was able by direct adjustment without arbitration

[71] Claudio Urrutia for Guatemala and Manuel E. Pastrana for Mexico. *Trats. y Conv. Vig.* (Mexico, 1909), I, 375. *Informe del Jefe* (Pastrana) *de la Com. Mex. a la Sec. de Fomento* (Mexico, 1897).

[72] Alberto Amador, *Memoria de la Cuestión de Límites entre México y Guatemala* (Mexico, Sec. de Rels. Ext. 1931), I.

to reach a settlement involving some concessions to her rather than any further loss of territory, all with peace and honor to both nations. It may be expected that the line thus completely agreed upon and marked will endure permanently between the two countries.

6. Guatemala–Salvador

Salvador

Pedro de Alvarado, with an expedition sent by Hernando Cortéz from Mexico City, probably penetrated as far as Salvador in 1523. Salvador declared her independence from Spain on September 21, 1821,[1] and was included with the rest of Central America under the rule of Agustín I of Mexico from September 1822 to July 1, 1823.[2] The Congress of Salvador on December 5, 1822, voted to request annexation to the United States and sent three commissioners to Washington in September 1823, but the government of President James Monroe, with John Quincy Adams as secretary of state, rejected the proposal. The state adopted a constitution on June 24, 1824, and was a member of the Federal Republic of Central America [3] from its organization on November 22, 1824, until its dissolution in 1838. A national assembly met on January 30, 1841, and the second constitution, promulgated February 18, 1841,[4] provided:

> Art. 1. Salvador is composed of the former Provinces of San Salvador, Sonsonate, San Vicente and San Miguel. It has for boundaries: on the east, the inlet of Conchagua; on the west, the river Paz; on the north, the Department of Chiquimula and the State of Honduras; and on the south, the Pacific Ocean. The exact demarcation shall be declared by a constitutional law, with regard to the necessary facts.
>
> Art. 101. Salvador shall contribute with all her capacity and forces to the reorganization of the Republic of Central America [whose Constitution, when enacted by legitimate authority, shall form part of that of Salvador, after being ratified by her Legislative Power.] But if, after efforts are exhausted, such reorganization shall not be attained, she will continue in the full exercise of her absolute independence and external sovereignty, erecting herself into a Republic until national reunion is attained.

President Doroteo Vasconcelos supported the idea of a Central American republic, and in 1848 invaded Guatemala with armed men from Honduras, Nicaragua, and Salvador, but was defeated by Dictator Rafael Carrera of Guatemala and deposed. Probably with an eye upon the activities of Great Britain on the

[1] *Recop. de las Leyes del Salvador, 1821 a 1855* (Guatemala City, 1855), 14, 17, 20.

[2] See Sec. 5, this chap., *supra*.

[3] See Sec. 4, this chap., *supra*.

[4] *Recop. de las Leyes del Salvador, 1821 a 1855* (Guatemala City, 1855), I, 23. 29 *British and Foreign State Papers* 206. Revised June 24, 1859.


15N
90W
89W
88W
GUATEMALA
HONDURAS
R. AUGUE
C. BRUJO
C. MONTE CRISTO
GUAYABILLAS RAVINE
SALITRE RANGO DE CUERO
RIO OSTUA
TIPA AFUERA
RIO CUXMAPA
V. CHINGO
R. ANGUIATU
S. GERONIMO
LAC DE GUIJA
RIO SAMPUI
C. DE CANAS
C. COLORADO
C. ST. HELENA
C. ARDILLA
C. CHAGUALACA
RIO NEGRO
CHALATENANGO
COLOMONCAGUA
R. S. ANTONIO
RIO LEMPA
C. LOPEZ
C. RABITA
RIO TOROLA
SENSUNTEPEQUE
TOROLA
ARAMBALA
PERIQUIN
14N
RIO DE PAZ
LA GARITA
RIO GRANDE DE
SAN SALVADOR
SALVADOR
GOASCORAN
RIO GOASCORAN
ACAJUTLA
RIO LEMPA
LA UNION
LA UNION BAY
CONCHAGUA VOL.
TIGRE ISLAND
MALA POINT
PACIFIC OCEAN
AMATILLO
GOLFO DE FONSECA
COSEGUINA VOL.
POINT
N I C.
13N
SALVADOR
0 5 10 25 50
ENGLISH MILES
90W
89W
88W

Mosquito coast, a legislative decree of February 12, 1850,[5] praising the initiative of the Supreme Dictator of Nicaragua in this respect, declared that:

Art. 1. The State of Salvador considers one of the essential principles of its policy the absolute exclusion of all intervention, direct or indirect, of any other foreign power in its domestic affairs and international relations with the republican States of America.

Art. 2. The extension and propagation of monarchial institutions, whether by means of conquest, colonization or sovereignty over wandering tribes, or by other means, upon the American Continent, is declared contrary to the interests of the republican States of America and threatening to their peace and independence.

Art. 3. Every voluntary concession, absolute or conditional, of any part of the former Confederation of Central America, with the object of colonization, or the occupation by any monarchial power or any supposed sovereign, under the protection of such power, will be considered by the State of Salvador not only hostile to its interests but also threatening to the peace and independence of the States of Central America.

Commander Hayes of the British warship *Champion* under orders from Rear-Admiral Hornby, commanding British naval forces in the Pacific, on November 5, 1850, put an embargo on all traffic in the port of La Unión, and on December 2, 1850,[6] declared the entire coast of Salvador to be in a state of blockade. President Francisco Dueñas in 1852 was successful in settling pending disputes with Guatemala and Honduras. The city of San Salvador was destroyed by an earthquake, April 16, 1854, and removed to a new site on the plain of Santa Tecla when rebuilt in 1855.

Salvador was loyal to the idea of a Central American federation and did not call itself a wholly independent republic until 1856; it adopted a third constitution on March 19, 1864. Salvador, alone of the Central American republics, signed with Bolivia, Colombia, Chile, Ecuador, Peru, and Venezuela at Lima on January 23, 1865,[7] a treaty of union and defensive alliance (directed in fact against Spain), mutually guaranteeing the independence, sovereignty, and integrity of their respective territories, and binding themselves not to concede or accept any protectorate or superiority that might diminish their independence or sovereignty and not to dispose to another nation of any part of their territory; and another treaty for the preservation of peace; neither treaty, however, was ratified by Salvador. Spain acknowledged Salvador's independence by a treaty signed at Madrid, June 24, 1865,[8] in which Isabella II recognized

Art. 1. . . . as a free, sovereign and independent nation the Republic of Salvador, composed of all the provinces mentioned in its current Constitution and of the other territories

[5] *Recop. de las Leyes del Salvador, 1821 a 1855* (Guatemala City, 1855), I, 41.

[6] 40 *British and Foreign State Papers* 858.

[7] *Col. de Trats. del Salvador* (San Salvador, 1884), 64, 296. 58 *British and Foreign State Papers* 420.

[8] Ratifications exchanged at Madrid, June 15, 1866. *Trats. de España* (Janer, Madrid, 1869), 393. *Col. de Trats. del Salvador* (San Salvador, 1884), 66. 58 *British and Foreign State Papers* 1250.

which legitimately belong or in the future may belong to it; [and renounced] . . . the sovereignty, rights and interests which belong to her over the territory of the said Republic.

The fourth constitution adopted October 16, 1871,[9] provided:

Art. 4. The territory of Salvador has for boundaries: on the east, the Gulf of Fonseca; on the north, the Republics of Guatemala and Honduras; on the west, the river Paz; and on the south, the Pacific Ocean. The special demarcation will be the subject of auxiliary laws.

Art. 129. Salvador retains the power to concur with all or with any of the States of Central America in the organization of a National Government, when circumstances may permit, and it may be consistent with her interests, and likewise of forming part of the great Latin-American Confederation.

In 1876 President Justo Rufino Barrios of Guatemala accused Salvador of giving asylum to political refugees from Guatemala, declared war, invaded Salvador, expelled her President, Andrés Valle, and after making peace at Chalchuapa on April 25, 1876, compelled a provisional government under Cruz Ulloa, foreign minister, to sign a treaty of peace and friendship at Santa Ana on May 8, 1876,[10] which agreed that:

Art. 1. There shall be loyal and sincere peace and friendship between the Republics of Salvador and Guatemala, to secure which the respective Governments undertake to unify their foreign policy, to act in agreement in matters of general interest for Central America and to bring about the same uniformity and harmony with the other Governments of the Central Republics.

Art. 3. The Governments of Salvador and Guatemala undertake that there shall be between them a complete offensive and defensive alliance in case of exterior war, whether with one or more of the Central Republics or with any foreign nation.

Art. 8. [Refugees in either Republic who have committed specified crimes, including homicide or serious injuries, shall be delivered over, even if they committed the offense under the protection of any faction or revolt.]

The fifth constitution of February 16, 1880,[11] provided:

Art. 2. The territory of Salvador has for boundaries: on the east, the Gulf of Fonseca; on the north, the Republics of Guatemala and Honduras; on the west, the river Paz and on the south, the Pacific Ocean. The special demarcation will be the subject of secondary laws.

Art. 129. Salvador retains the power to concur with all or any of the States of Central America in the organization of a National Government, when circumstances permit, and such a course conduces to its interests, as well as that of forming part of the Great Latin-American Confederation.

[9] 61 *British and Foreign State Papers* 1166. Amendments of Nov. 9, 1872, made no change in Articles 4 or 129, except to renumber the latter 136. 63 *British and Foreign State Papers* 941.

[10] Ratifications exchanged at San Salvador, Aug. 18, 1876. *Col. de Trats. de Salvador* (San Salvador, 1884), 195. 67 *British and Foreign State Papers* 984. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 192.

[11] 72 *British and Foreign State Papers* 1082.

The sixth constitution promulgated December 6, 1883,[12] provided:

Art. 2. Salvador considers herself a separated section of the Central-American nation and is disposed to concur with all or any of the Republics into which it is now divided for the organization of a National Government, when circumstances permit and it shall suit her interests to do so; as also to form part of the great Latin-American confederation.

Art. 4. The territory of Salvador has for boundaries: on the east, the Gulf of Fonseca; on the north, the Republics of Guatemala and Honduras; on the west, the river Paz and on the south, the Pacific Ocean. The special demarcation shall be the subject of secondary laws.

President Barrios of Guatemala, in support of his design to reëstablish the Central American Union, invaded Salvador again and was killed there in battle on April 2, 1885.[13] The seventh constitution adopted August 13, 1886,[14] provided:

Art. 3. The territory of Salvador has for boundaries: on the east, the Gulf of Fonseca; on the north, the Republics of Guatemala and Honduras; on the west, the river Paz; and on the south, the Pacific Ocean. The special demarcation shall be the subject of a law.

Art. 151. Salvador, being a separated part of the Republic of Central America, retains the power to concur with all or with any of the States of it for the organization of a National Government, when circumstances permit and it so suits its interests, as also to form part of the great Latin-American Confederation.

Guatemala, claiming to have been invaded by forces of the *de facto* government of Salvador, declared war on July 21, 1890.[15] Preliminary bases for peace were agreed on at Acajutla on August 25, and a treaty of peace signed at Guatemala City on November 15, 1890,[16] provided for a new government in Salvador, no harboring of revolutionary factions, and arbitration of all future differences. War between Guatemala and Salvador, with Honduras as a more or less quiescent ally of Salvador, broke out in June 1906, and after brief hostilities, both countries accepted the tender of good offices by President Porfirio Díaz of Mexico and President Theodore Roosevelt of the United States, and declared an armistice from July 18.[17] Delegates of Guatemala, Honduras, and Salvador, with special delegates from Costa Rica and Nicaragua, under the presidency of the ministers of the United States and Mexico, met on the U. S. cruiser *Marblehead* at San José de Guatemala on July 20, 1906. After steaming out beyond the three-mile limit, the delegates of Guatemala, Honduras, and Salvador signed a convention of peace, agreeing to concentrate and guard political refugees and to submit any further differences to arbitration. The *Marblehead* treaty led to the Central

[12] *Const'n Política de la Rep. del Salvador* (San Salvador, 1883). 75 *British and Foreign State Papers* 884. *Arch. Dipl.*, 2e Sér., II (1885), 203.

[13] See Sec. 4, this chap., *supra*.

[14] *Const'n y Cod. de la Rep. de El Salvador* (Barcelona, 1926), 3. 77 *British and Foreign State Papers* 1317.

[15] 82 *British and Foreign State Papers* 726.

[16] *Arch. Dipl.*, 2e Sér., XXXVII (1891), 264. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XVIII (1893), 206.

[17] *U. S. For. Rel.*, 1906, I, 834–854. *Amer. J. Int. Law*, I (1907), 146.

American Peace Conference which met at Washington from November 14 to December 20, 1907. Salvador's action in the Central American Court of Justice in 1916 against Nicaragua for the signing of the Bryan-Chamorro Treaty with the United States will be treated in a later section.[18] In the World War, Salvador declared her neutrality on December 4, 1914,[19] and undertook to maintain it, even after the United States had declared war,[20] but on October 3, 1917, declared war on Germany.

On December 14, 1919,[21] Salvador, having been invited to adhere to the Covenant of the League of Nations, which in Article 21 mentions the Monroe Doctrine as an example of a regional understanding for securing the maintenance of peace, politely but annoyingly asked the United States "to set forth the authentic idea of the Monroe Doctrine, as the illustrious Government of the White House understands it in the present historic moment and in its intentions for the future." In reply, the United States Department of State referred Salvador to an extract from President Woodrow Wilson's address before the Second Pan-American Scientific Congress in Washington on January 6, 1916. Salvador became a member of the League of Nations, March 10, 1920. On March 7, 1920,[22] Arturo Araujo was discovered to be plotting a revolution in San Salvador, and when he escaped to Honduras and was accused of receiving aid from the government there, Salvador sent troops to the border. The United States urged peace on both countries, and after Araujo left for the United States matters gradually quieted down.

On December 3, 1931, President Arturo Araujo was ousted by a military coup, and Vice-President Maximiliano Hernández Martínez became president, pending new elections. The United States, after Jefferson Caffery, former minister, had flown to San Salvador to look into the matter, announced that in accordance with the treaty of May 3, 1923, to prevent American conflicts, it would not recognize the Martínez government, and expected that Costa Rica, Guatemala, and Honduras would take similar action. United States Minister Charles Boyd Curtis was withdrawn; but General Martínez was declared constitutional president by the Salvadorian Congress on February 5, 1932, and Guatemala and Honduras extended recognition in 1933, Costa Rica on January 3, 1934, and the United States on January 26, accrediting Frank P. Corrigan as minister on March 14, 1934. In February 1935 Salvador denied that she was planning to give Japan a foothold in the Gulf of Fonseca, but in September it was reported that

[18] See Sec. 13, this chap., *infra*.

[19] *Rev. gén. de dr. int. pub.*, XXIV (1917), docs. 228.

[20] Note of Oct. 3, 1917. Deak & Jessup, *Collection of Neutrality Laws, 1939*, p. 563.

[21] *U. S. For. Rel.*, 1920, I, 223–227. *Survey of Int. Affairs, 1925* (London, 1928), II, 403. *Rec. des Cours* (1929, III), XXVIII, 65.

[22] *U. S. For. Rel.*, 1920, III, 728–746.

Diodo Kyogio Kaisha, Ltd., of Tokyo had been negotiating with Salvador for a fishing grant over part of the gulf, with a base on the shore; and on November 15, 1935, Nicaragua complained that Salvador should not have given the Japanese any rights, if she had, without consulting Honduras and Nicaragua, who had equal jurisdiction over the gulf.[23] On August 10, 1937,[24] Salvador gave notice of her withdrawal from the League of Nations. On March 7, 1938, it was announced that Salvador had received from Italy four old Caproni airplanes in exchange for coffee. Salvador in June 1935 had been the only nation to recognize Japan's puppet state of Manchukuo, and the Emperor of Japan on September 6, 1938, sent decorations to President Martínez and several consuls. Pro-Nazi activity by Baron von Gundelshausen, German consul-general and manager of the Banco Hipotecario in San Salvador, caused some press comment in February 1939; and it was noted that there were colonies of four hundred Germans and six hundred Italians in the country. The only foreigner in the army, Colonel Everhard Bohnstedt, resigned on September 6, 1939, as director of the Military College. In November 1939 the Italian arms agent, Lieutenant Colonel Sergio Belice, artillery engineer, was in San Salvador. Salvador, about the size of New Jersey, has an area of 7,225 square miles.

Boundary

This short frontier of ninety miles appears for over a hundred years to have been the subject of no recorded dispute or even complaint. By an exchange of notes of August 17 and 23, 1935,[25] the governments of Guatemala and Salvador agreed to fix and establish definitely their jurisdictional boundaries. In August 1935 and thereafter, some difficulties were reported in the frontier area with Salvadorian residents, leading even to clashes between Guatemalan soldiers and Salvadorian national guardsmen, but both governments kept calm and the trouble soon quieted down. In another exchange of notes of September 12 from Guatemala and October 15, 1935, from Salvador, it was agreed to set up a joint commission of one delegate from each nation [26] and a third neutral of acknowledged competence and impartiality,[27] to prepare preliminary maps, based on nine hundred aerial photographs made by an American commission by agreement between the two governments, and to execute the physical marking and tracing of the frontier, the erection of permanent concrete posts, topographical and trigono-

[23] See Sec. 1, this chap., *supra*.

[24] Effective Aug. 9, 1939. *League of Nations Monthly Summary* (1937), XVII, 169.

[25] Between Alfredo Skinner Klée, Foreign Minister of Guatemala, and Dr. Miguel Angel Araujo, Foreign Minister of Salvador.

[26] Florencio Santiso, for Guatemala, and Jacinto Castellanos Palomo, for Salvador.

[27] Sidney H. Birdseye, of Washington, neutral member appointed by the Pan American Union. *Cf.* Sec. 4, Note 104, this chap., *supra*.

metrical surveys, and the preparation of accurate maps. The joint frontier commission held numerous meetings [28] from February 1936 to January 1938, and agreed to proceed in accordance with the following principles:

I. The boundary as determined in virtue of continuous possession over a number of years by the respective Republics, where the latter have developed local interests and where the jurisdiction of their respective sovereignties has been exercised, shall be recognized as the frontier between Guatemala and Salvador.

II. The system of elimination shall be adopted, that is to say, all undisputed frontier points such as the Montecristo Ridge, already accepted as the trifinial boundary-mark between Guatemala, Salvador and Honduras, the river Anguiatú and the river Paz, shall be determined first.

III. Wherever the frontier is open to doubt, the line of traditional possession shall be studied and determined, following approximately the line of present possession and including such boundary-marks as are universally acknowledged.

IV. Natural lines shall be chosen by preference, and advantage shall be taken of topographical features to assist the identification and marking of the frontier.

It was agreed to begin field work on October 19, 1937, at the Montecristo Ridge; and further, to recognize

the existing frontier in the zone extending from the summit of the Montecristo ridge to the river Chingo, Coco or Jerez; and the existing frontier in the zone extending from the river Chingo to the mouth of the river Paz on the Pacific Ocean.

This agreement shifted a small portion of the line near the Honduran corner southward from the peak of Mount Montecristo to Mount Bruja and transferred about twenty-four square miles of territory from Salvador to Guatemala. The commission's line was approved by the executives and legislatures of both countries, and, as agreed, recorded in a boundary treaty, with the fixed status of a law for both republics, signed at Guatemala City on April 9, 1938,[29] providing:

Art. 1. The territorial boundaries between Salvador and Guatemala were and are as follows:

(*a*) In the zone extending from the summit of the Montecristo ridge to the river Chingo, Coco or Jerez, the existing boundary, which, with slight technical modifications essential to demarcation, is defined as follows: From the trifinial boundary-mark on the summit of the Montecristo ridge where the Republics of Salvador, Guatemala and Honduras meet [westerly towards the head of the nearest ravine of the river Negro, Frío, Brujo or Anguiatú; down the median line of the ravine and then of the river to Los Cedros ravine; then up the median line

[28] Among others: XIV at Guatemala City, Oct. 7, 1937; XV at Santa Ana (Salvador), Oct. 16, 1937; XVI at Guatemala City, Dec. 15, 1937; XVIII at Guatemala City, Jan. 25, 1938; XIX at Santa Ana, Jan 28, 1938. *Bull. Pan Amer. Union* (1937), LXXI, 733.

[29] Ratified by Guatemala, April 30, 1938; ratified by Salvador, April 19, 1938; ratifications exchanged at Guatemala City, May 24, 1938. *Diario de Cent. Am.* (Guatemala, July 13, 1938), XXIII, 101. *Trat. de Límites Territoriales entre El Salvador y Guatemala* (San Salvador, 1938). *League of Nations Treaty Series*, CLXXXIX, 276–311.

to the head of the nearest tributary to the summit of the Brujo ridge; straight to the triangular mark erected by the Joint Frontier Commission at the summit of said Brujo ridge; northerly to La Piedrona boundary-mark at the edge of the river Negro, Frío, Brujo or Anguiatú; down the median line of that river to its confluence with the river Angue, Nejapa or Grande, southeast of Valeriano village in Salvador; down the median line of the river Angue to its confluence with the Guayabillas ravine north of San Jerónimo hamlet; up the Guayabillas ravine to where it joins a little dry ravine which passes close by the Salitre Rancho de Cuero boundary-mark; upstream by the said little ravine to the Salitre Rancho de Cuero boundary-mark, straight to the Loma Talpetatosa mark on the road from Santa Barbara to La Cañada; straight to the summit of the Mamey ridge; straight to La Puerta boundary-mark, at the intersection of the road from Piñuelas to El Shiste north of the Tecuan ridge with El Shiste ravine; down the median line of El Shiste ravine to a boundary-mark at the corner of the Estrada, Bojórquez and Orellana estates; straight to the Quebracho or Corral Falso boundary mark; straight to El Barreal mark, on the more easterly of the two Guacuco ravines; down the Guacuco stream to where it empties into the Virgen or Capichul ravine; up the median line of that ravine to La Frutera mark; straight to El Jobo mark; straight to the summit of the Junquillo ridge; to the Junquillo mark on the boundary of the Amajaque and Ostúa ranches; by the boundary of those ranches through the Mora, Las Culebras ridge and the rest of the marks on this boundary to the junction of the two ravines which together form the Quebrada Precipitada, down the median line of the said Precipitada ravine to its junction with the river Ostúa; down the median line of the course of the river Ostúa to where it now empties into Lake Güija; southerly along the western edge of the peninsula which juts out from north to south into Lake Güija to the end of said peninsula or its most southerly point; straight across Lake Güija to the most northerly point of the Tipa Afuera peninsula, which juts into said Lake from south to north; along the east side of said peninsula and the edge of the Lake to where the river Cuxmapa now empties; up the median line of the river Cuxmapa to El Camposanto de Gamboa in the plains of Sunza; straight to El Talpetate boundary mark; straight to the summit of El Cerrón hill, to the west of Portezuelo de la Cañada hamlet; straight to the triangular stone erected on the central peak of the Campana ridge by the Joint Frontier Commission; straight to the triangular stone erected by said Commission near Amate and El Paso de San Cristóbal; straight towards the triangular mark erected by the Joint Frontier Commission on the summit of Islamatepeque ridge 1,250 meters from the triangular mark at Amate de San Cristóbal; changing direction and straight towards the Ojo de Agua de El Naranjo; from said Ojo de Agua de El Naranjo straight towards the triangular mark erected by the Joint Frontier Commission on the summit of the Chingo volcano; straight to the summit of the little ridge known as El Matadero on the southern slope of the Chingo volcano; straight to the Cuatro Piedras boundary-mark in the Seca del Palo de la Estrella ravine; down the said Seca ravine to its junction with or entry into the river Chingo, Coco or Jerez].

(*b*) In the zone extending from the river Chingo to the mouth of the river Paz on the Pacific Ocean, with slight technical modifications essential to demarcation, the territorial boundaries are defined as follows: [from the junction of the Seca del Palo de la Estrella ravine with the river Chingo, Coco or Jerez; down the median line of said river to its confluence with the river Pampe or Chalchuapa; down the median line of said river to where the Los Sitios or Güeveapa ravine runs into it; down the said river Güeveapa, Pampe or Chalchuapa to its confluence with the river Paz at Los Naranjos; down the course of the river Paz till it empties

in the Pacific Ocean, passing through (1) the confluence of the rivers Chalchuapa and Paz, (2) the confluence of the rivers Paz and Pululá, (3) the confluence of the rivers Paz and Tacuba, (4) point where an arm of the Paz leaves the main stream near Salamar, and (5) mouth of the river Paz, at 13°44′11″ N latitude, 90°08′ W longitude].

Art. 2. No change in the bed of frontier rivers, whether due to natural causes such as alluvium deposits, landslides, freshets, etc., or to artificial causes such as the construction of public works, the deepening of channels for water-supply, etc., shall affect the frontier as determined at the time of demarcation, which shall continue to be the international boundary even though a stream may have completely abandoned its original bed.

Each Government reserves the right to utilize half the volume of water in frontier rivers, either for agricultural or industrial purposes; but in no circumstances may concessions be granted to foreign undertakings or companies.

Art. 4. The Joint Frontier Commission shall proceed immediately to the physical marking and tracing of the frontier on the spot . . . and . . . shall also proceed immediately to construct posts and marks to render the frontier visible and permanent.

These two nations, with no unsuccessful diplomatic negotiations, unratified or abrogated treaties, or even any need of separate arbitration, settled in a three months' exchange of four notes and a later formal treaty, following a field survey, their entire boundary amicably and, it may confidently be expected, permanently.

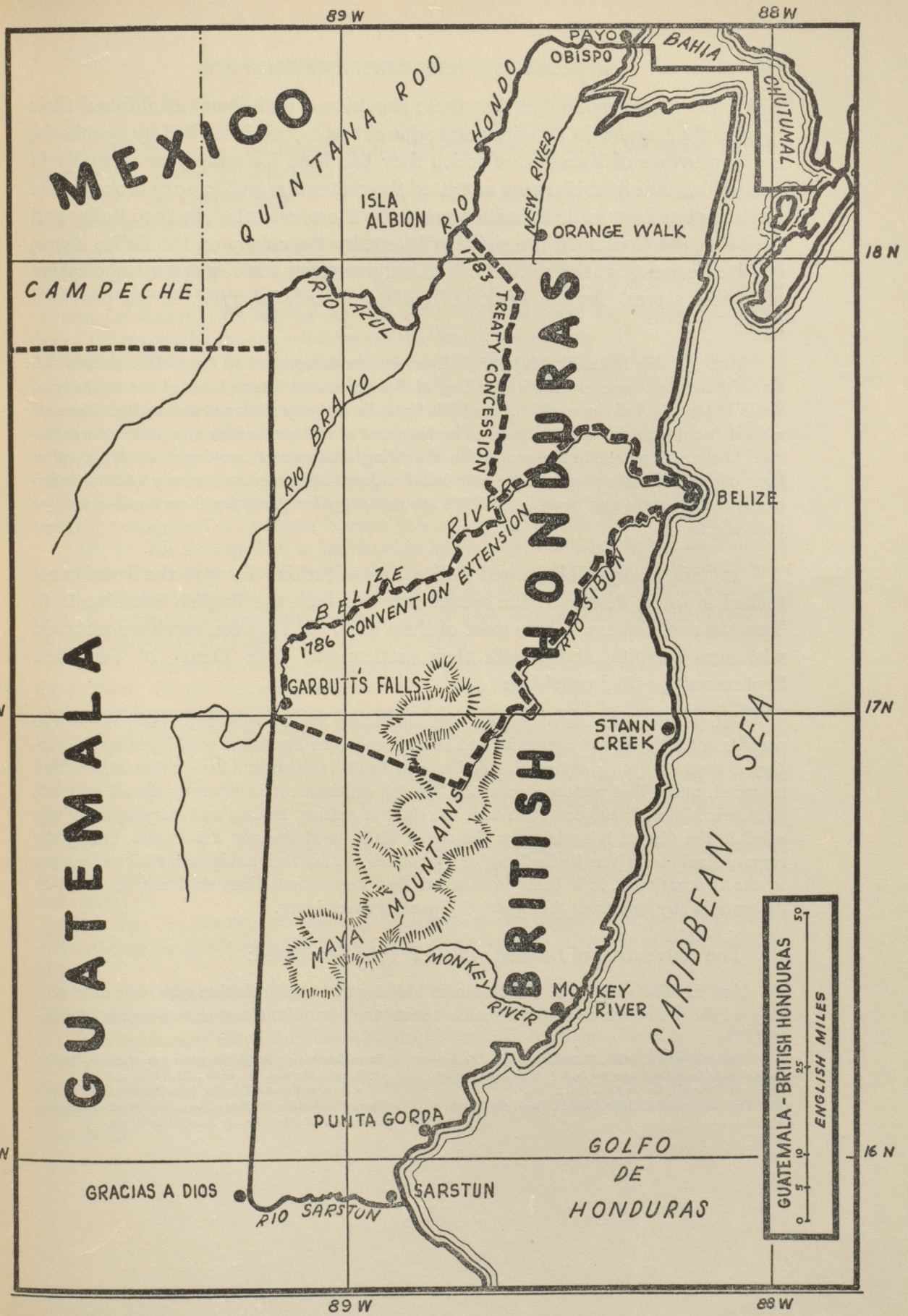
7. Guatemala–Great Britain

British Honduras

The region known formerly as Belize, now British Honduras, lies between 18°30′ and 15°53′ N latitude and 87°28′ and 89°16′ W longitude, on the west shore of the Gulf of Honduras, south of Quintana Roo Territory, Mexico, and east of Guatemala. It has an area of 8,598 square miles, 180 miles at its longest and 57 miles at its widest, thus being a little larger than Wales. It has been a British colony for three hundred years. British settlement was begun in 1638 by shipwrecked sailors and buccaneers. In 1662 woodcutters from Jamaica planted the first regular establishment, and by the Treaty of Madrid of July 18, 1670,[1] Charles II of Spain agreed that:

Art. 7. The Most Serene King of Great Britain [Charles II] and his heirs and successors shall enjoy, have and possess in perpetuity, with full right of sovereignty, ownership and possession, all the lands, provinces, islands, colonies and dominions situated in the West Indies, or in any part of America, which said King of Great Britain and his subjects have and possess at present.

1 *Col. de los Trats. de España* (Abreu, 1751), I, 498.


89 W
88 W
MEXICO
QUINTANA ROO
CAMPECHE
GUATEMALA
BRITISH HONDURAS
CARIBBEAN SEA
GOLFO DE HONDURAS
PAYO OBISPO
BAHIA CHETUMAL
HONDO
NEW RIVER
ISLA ALBION
RIO
ORANGE WALK
1783 TREATY CONCESSION
RIO AZUL
RIO BRAVO
BELIZE
BELIZE RIVER
1786 CONVENTION EXTENSION
RIO SIBUN
GARBUTT'S FALLS
STANN CREEK
MAYA MOUNTAINS
MONKEY RIVER
MONKEY RIVER
PUNTA GORDA
GRACIAS A DIOS
SARSTUN
RIO SARSTUN
18 N
17N
16 N
GUATEMALA - BRITISH HONDURAS
ENGLISH MILES
0
5
10
25
50

The woodcutters contended that these provisions applied and established their right to the Laguna de Términos and adjacent parts, not inhabited by Spaniards, in the province of Yucatan, of which they had been for some years actually in possession. The Spanish never admitted the contention, and in 1717 broke up the settlement at Laguna de Términos and drove the woodcutters back to Belize and the Mosquito Coast. In the eighteenth century the colony on the Belize River, despite frequent fighting with the Spanish, prospered and began the importation of African slaves. By the Treaty of Paris, February 10, 1763,[2] it was provided that:

Art. 17. His Britannic Majesty shall cause to be demolished all the fortifications which his subjects shall have erected in the Bay of Honduras and other places of the territory of Spain in that part of the world . . . and His Catholic Majesty shall not permit His Britannic Majesty's subjects or their workmen to be disturbed or molested under any pretence whatsoever, in the said places, in the occupation of cutting, loading and carrying away dye wood or logwood; and for this purpose they may build without hindrance and occupy without interruption, the houses and magazines which are necessary for them, for their families and for their effects.

In 1765 George III granted Belize a constitution. In 1779 the Spanish attacked in force, destroyed the settlement, and took the English inhabitants to Yucatan and Habana, where most of them died. In 1783 the survivors returned with new recruits, and rebuilt their settlements. The Treaty of Versailles, September 3, 1783,[3] provided:

Art. 6. The intention of the two high contracting parties being to prevent, as much as possible, all the causes of complaint and misunderstanding heretofore occasioned by the cutting of wood for dyeing, or logwood, and several English settlements having been formed and extended, under that pretence, upon the Spanish continent, it is expressly agreed that His Britannic Majesty's subjects shall have the right of cutting, loading and carrying away logwood in the district lying between the rivers Wallis or Belize and Río-Hondo, taking the courses of said two rivers for ineffaceable boundaries; so that their navigation shall be common to the two nations, . . . it being understood that these stipulations shall not be taken to derogate in any way from the rights of [Spanish] sovereignty.

The convention of London, July 14, 1786,[4] provided:

Art. 1. The subjects of His Britannic Majesty and other colonists who have until now enjoyed the protection of England shall evacuate the Mosquito Coast as well as the [Ameri-

[2] *Trats. de España* (Cantillo, Madrid, 1843), 486. *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 463. Martens, *Rec. de Tr.*, I (1817), 104.

[3] *Trats. de España* (Cantillo, Madrid, 1843), 586. *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 496. Martens, *Rec. de Tr.*, III (1818), 541.

[4] *Trats. de España* (Cantillo, Madrid, 1843), 614. *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 509. Martens, *Rec. de Tr.*, IV (1818), 133.

can] Continent in general and the adjacent islands, situated beyond the line hereinafter described as the proper frontier of the extension of territory granted by His Catholic Majesty to the English for the uses specified in Article 3 hereof, and in addition to the country already accorded them by the stipulation of 1783.

Art. 2. The Catholic King . . . is willing to accord the English more extended bounds than those specified in the last Treaty of peace, and said bounds of the country added in the present Convention shall be as follows: The English line, commencing at the sea, shall touch the center of the river Sibun or Jabon and shall continue to the source of said river; thence it shall traverse in a straight line the intermediate country until it cuts the river Wallis; and by the center of that river the said line shall descend to the point where it meets the line already drawn and marked by the Commissioners of the two Crowns in 1783.

Art. 3. Although there has been no question until now of any privileges than that of cutting dye wood, His Catholic Majesty . . . is willing to accord to the English the liberty of cutting all other wood except mahogany, and even of gathering all fruits or produce of the soil which grow naturally and without cultivation. . . . But it is expressly agreed that this stipulation shall never be used as a pretext to establish in that country any plantation of sugar, coffee or other such articles or any factory or manufacture by means of mills or any other machines whatever (except for wood cutting or preparing), inasmuch as all the country in question is recognized as belonging incontestably and by right to the Crown of Spain.

Art. 4. The English shall be permitted to occupy the little island known as Casina or Georges Cay in consideration of the fact that the part of the coast opposite said island is subject to dangerous maladies. . . . And it is stipulated as an indispensable condition that there shall not be erected any fortification nor any sort of work of defence and that there shall not be posted any body of troops or any piece of artillery.

Art. 5. The English nation shall enjoy the liberty of repairing their merchant vessels in the southern triangle comprised between the point of Casina cay and the group of small islands which are situated opposite that part of the coast occupied by the wood-cutters, 8 leagues from the river Wallis, 7 from Casina cay and 3 from the river Sibun, a place which has always been found very suitable for that purpose. To that end, it shall be permitted to build houses and magazines absolutely necessary for that service; but in this concession is also included the express condition of erecting no fortifications at any time and of putting no troops in garrison, nor of constructing any military work.

Art. 10. The Spanish Governors shall be ordered to give to said scattered English all facilities possible to transport themselves to the establishments granted by the present Convention.

Art. 11. . . . His Britannic Majesty undertakes to give the most positive orders for the evacuation of the above-mentioned country by all his subjects, whatever may be their condition.

Art. 14. His Catholic Majesty, influenced solely by motives of humanity, promises the King of England that he will not exercise any act of harshness against the Mosquitos, living in part of the country which must be evacuated by reason of the present Convention, because of any relations which may have existed between said Indians and the English; and His Britannic Majesty, on his part, shall forbid in the strictest manner his subjects from furnishing arms or naval munitions to Indians in general, established on the frontiers of the Spanish possessions.

In 1798 the Spanish made a determined attempt from Yucatan to destroy the new settlement at Belize, but were beaten off by the Baymen, with the help of a British ship, and thereafter the Spanish made no further attacks.

As late as 1814 Great Britain would seem to have recognized her subjects' limited rights and Spain's sovereignty at Belize, for by additional Article I (signed at Madrid, August 28, 1814)[5] to the Treaty of Madrid, July 5, 1814, all treaties of commerce which prior to 1796 existed between the two nations were expressly ratified and confirmed, thus reviving the treaties of 1783 and 1786. After 1815 Spanish commissioners no longer visited the region, and British settlement pushed gradually southward from the Sibun as far as the north bank of the Sarstún. With the independence of the Spanish colonies in 1821 [6] Guatemala, Honduras, Mexico, and Nicaragua inherited the Spanish rights, and their relations with the Belize settlement became strained.[7] In 1849 there was a considerable influx of Spaniards fleeing from the Indians of Yucatan.

A broader claim of Great Britain dating from 1836 was partially recognized by the United States in the Clayton-Bulwer Treaty of April 19, 1850,[8] by the omission of Belize from the provision forbidding fortifying by either Great Britain or the United States of points on the Central American coast. An extradition agreement between Guatemala and British Honduras was put into effect in January 1853.[9] The United States from 1850, by Secretaries of State John M. Clayton, William L. Marcy, and Lewis Cass [10] in turn, insisted that the British should confine themselves to the original territory of Belize, bounded south by the river Sibun; but when Great Britain made the treaty of April 30, 1859, with Guatemala, gave up the Bay Islands to Honduras in 1859,[11] and the Mosquito territory to Nicaragua in 1860,[12] the United States ceased to complain about the extension of British Honduras south to the river Sarstún.[13]

In 1862 British Honduras was made a colony [14] with a lieutenant-governor under the governor of Jamaica; in 1870 it became a Crown colony, and in 1884 was wholly severed from Jamaica.[15] British Honduras is now administered by a governor with an executive council of seven members and a legislative council of six official and two nominated and five elected unofficial members. The legal system has always been the British common law

[5] 1 *British and Foreign State Papers* I, 292. *Trats. de España* (Cantillo, Madrid, 1843), 732.

[6] See Secs. 4 and 5, this chap., *supra*.

[7] 18 *British and Foreign State Papers* 1262.

[8] Article 1. Ratifications exchanged at Washington, July 4, 1850. 9 Stat. L. 995. *Treaties of the U. S.* (Malloy, 1910), I, 659. See Sec. 12, this chap., *infra*.

[9] 59 *British and Foreign State Papers* 292.

[10] *Amer. Secs. of State* (N. Y., 1928), VI, 65–68, 218–219, 229, 362, 367.

[11] See Chap. II, Sec. 2, *infra*.

[12] See Sec. 12, this chap., *infra*.

[13] *Dipl. Corr. of the U. S.* (Manning, Washington, 1936), VII, 85–91, 105–106, 120, 126, 151, 216, 515, 531, 574–577, 661, 666, 682, 722, 728, 767.

[14] Francis Rivas Puigcerver, *Belize and the Monroe Doctrine* (Jan. 1901).

[15] Peace Handbooks, *British Honduras* (London, 1920), XXI, No. 133.

and statutes.[16] British Honduras has never had any land boundary with the republic of Honduras.

Boundary

After negotiations beginning in 1857,[17] a boundary agreement with Guatemala was finally reached on the basis of actual British occupation, and embodied in a treaty signed at Guatemala City on April 30, 1859,[18] providing:

Whereas the boundary between Her Britannic Majesty's settlement and possessions in the Bay of Honduras, and the territories of the Republic of Guatemala has not yet been ascertained and marked out . . .

Art. 1. It is agreed between Her Britannic Majesty and the Republic of Guatemala, that the boundary between the Republic and the British Settlement and Possessions in the Bay of Honduras, as they existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time, was and is as follows:

Beginning at the mouth of the river Sarstoon in the Bay of Honduras, and proceeding up the mid-channel thereof to Gracias á Dios Falls; then turning to the right and continuing by a line drawn direct from Gracias á Dios Falls to Garbutt's Falls on the river Belize, and from Garbutt's Falls due north until it strikes the Mexican frontier.

It is agreed and declared between the High Contracting Parties that all the territory to the north and east of the line of boundary above described, belongs to Her Britannic Majesty; and that all the territory to the south and west of the same belongs to the Republic of Guatemala.

Art. 2. [Each nation shall appoint a Commissioner to designate and mark out this boundary.]

Art. 3. [The Commissioners after meeting and making a declaration of impartiality, before proceeding to any other business shall name some third person to act as arbitrator or umpire in any cases in which they may differ in opinion; and if they cannot agree upon such third person, they shall each name a person, and in each case the one of such two to act shall be determined by lot.] Her Britannic Majesty and the Republic of Guatemala shall engage to consider the decision of the two Commissioners conjointly; or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be respectively referred to their decision, and forthwith to give full effect to the same.

Art. 6. It is further agreed that the channels in the water-line of the boundary described in Article 1 of the present Convention shall be equally free and open to the vessels and boats of both Parties; and that any islands which may be found therein shall belong to that party on whose side of the main navigable channel they are situated.

Art. 7. With the object of practically carrying out the views set forth in the preamble of the present Convention, for improving and perpetuating the friendly relations which at present so happily exist between the two High Contracting Parties, they mutually agree con-

[16] *J. Soc. Comp. Law*, I (1897), 367.

[17] Originally entrusted to Sir William Gore Ouseley; transferred in February 1859, to Sir Charles Lennox Wyke. 50 *British and Foreign State Papers* 135. 143, 300–303.

[18] Ratifications exchanged at Guatemala City, Sept. 12, 1859. 49 *British and Foreign State Papers* 7. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 158; XVI (1860), II, 366; 3e Sér., XXVI (1933), 45.

jointly to use their best efforts, by taking adequate means for establishing the easiest communication [either by means of a cart-road, or employing the rivers, or both united, according to the opinion of the surveying engineers], between the fittest place on the Atlantic coast, near the settlement of Belize, and the capital of Guatemala; whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented for the future.

The joint commissioners were appointed in 1860, and in 1861 they met and marked the position of the terminal points of the southern section of the boundary, Garbutt's Falls and Gracias á Dios Falls, and erected twenty-nine intermediate pyramids of stone. There ensued a long correspondence between the two nations from May 15, 1861, to September 25, 1867, over the meaning of Article 7, in the course of which Guatemala offered on July 2, 1862, to accept £50,000 in full discharge of the obligations under Article 7, as the present equivalent of Great Britain's estimated expenses of £145,465 to carry it out; but a convention which was signed by Sir Charles Lennox Wyke and Juan de Francisco Martín, Guatemalan minister, in London on August 5, 1863, for the purpose, was not ratified by either party. Lord Stanley on January 5, 1867, notified the Guatemalan foreign minister that because the construction costs would be very much greater than had been expected, Great Britain considered her obligations under Article 7 cancelled, to which Guatemala protested. There the matter rested with occasional exchanges of notes until 1884.[19] In 1928 joint commissioners were again appointed.[20] They met on the river Sarstún on January 16, 1929, inspected the concrete monument on the north bank at Gracias á Dios, nine hundred yards upstream from the mouth of the Chocon branch, and the pile of stones on either side of the river Belize at Garbutt's Falls, decided to accept these marks as indicating the exact position of the two terminal points, and in May 1929 replaced the marks by new concrete monuments, that at Garbutt's Falls being placed on the southern side of the river Belize. Their report was received and the concrete monuments were accepted by both governments in notes exchanged, August 25–26, 1931.[21] There was further correspondence from February 21, 1933, to September 11, 1935, concerning the demarcation and acceptance of the line, and as to suppression of smuggling, Guatemala on her side constantly inquiring how and when Great Britain proposed to carry out Article 7 of the convention of April 30, 1859. On September 16, 1936, the Guatemalan secretary of foreign relations and

[19] *Rev. de dr. int. et de lég. comp.*, IV (1902), 367.

[20] For Guatemala, Fernando Cruz; for Great Britain, Fred W. Brunton.

[21] 134 *British and Foreign State Papers* 270–272. Martens. *Nouv. Rec. Gén. de Traités*, 3e Sér., XXVI (1933), 42.

the British minister at Guatemala City met and after a conference exchanged memoranda of two proposals by Guatemala that (1) Great Britain should return to her the entire territory of British Honduras, for a payment of £400,000 and Guatemala would make no further claim for fulfillment of the treaty of 1859, or, Great Britain should pay Guatemala £400,000 and grant a strip of land at 16°08′39″ N latitude necessary to give the department of Petén an outlet to the sea, and Guatemala would approve the demarcation of the rest of the line with Belice; or (2) Guatemala would forego all claim for nonfulfillment of the treaty of 1859 and Great Britain should pay her £50,000 with interest at 4 per cent from April 30, 1859, and grant a strip of land for the department of Petén to have an outlet to the sea by fixing the southern frontier of Belice at 16°08′39″ N latitude. None of these proposals was acceptable to Great Britain, and on July 21, 1937, Guatemala proposed that the question be submitted to the arbitration of the president of the United States, which proposal Lord Halifax, British foreign minister, accepted on August 17, 1937, with the substitution of the Permanent Court of International Justice at The Hague as arbiter. Guatemala declined to accept the change, and no progress was made in further notes down to March 9, 1938. In April 1939,[22] Guatemala made fresh inquiries of Great Britain as to when the construction of the road could be expected to start, whereupon Great Britain announced that the claim had no validity and that it would serve no good purpose to discuss it. The large colony of Nazis in Guatemala, whose influence was generally credited with keeping alive the question, thereupon began to try to make capital of the matter, declaring that it showed typically how the British Empire always treated smaller nations. The Guatemalan legal position appears to be[23] that as Articles 2 and 7 of the 1859 convention have not been complied with, and no part of the £50,000 compensation tentatively agreed upon has been paid, the entire convention is now of no effect, and the whole boundary question is therefore open and unsettled.[24] On August 20, 1939, it was announced that Sinforoso Aguilar, newly appointed Guatemalan minister to Great Britain, had instructions to open the question again with Viscount Halifax; and on September 23, 1939, British Minister John Hurleston Leech was reported to have told the Guatemalan government that England was disposed to settle the long-standing dispute and would be glad to resume negotiations soon. On March 11, 1940, Juan Felipe Toruno, head of the Salvadorian section of the American Groups of

[22] Sinforoso Aguilar, *La Cuestión de Belice*; *Rev. de la Fac. de Ciencias Jurid. y Soc. de Guatemala*, Epoca III (1938), I, 281–307, 499–530; (1939), II, 56–114, 290–322, 440–453, 543–556.

[23] Libro Blanco, *Cuestión de Belice* (Guatemala City, Oct. 1938). *Continuación del Libro Blanco, Estudio Juridico por Luis Anderson* (Guatemala City, July 1939). Luis Anderson "Estudio Juridico acerca de la Controversia entra Guatemala y la Gran Bretaña," *Rev. de Der. Int.* (Habana, 1939), XXXV, 163.

[24] J. Fernando Juárez Muñoz, "Belice es Nuestro," *Rev. de la Fac. de Ciencias Jurid. y Soc. de Guatemala*, Epoca III (1939), II, 557–561.

Journalists and Intellectuals, suggested that the other sections should support Guatemala's claim against Great Britain, but the proposal was not followed up. On June 15, 1940, President Jorge Ubico announced that efforts to reincorporate British Honduras with Guatemala would be suspended until Great Britain had less pressing major difficulties on her hands.

The line as agreed upon by treaty in 1859, and partially marked in 1929, has but three courses: from the mouth of the river Sarstún in the Gulf of Honduras up the mid-channel of that river about twenty-five miles to the concrete monument on the north bank at Gracias á Dios; thence turning to the right, by a straight line northward about eighty-five miles to the concrete monument on the south bank of the river Belize at Garbutt's Falls; and thence about fifty-five miles due north to the Mexican frontier, south of the river Azul in the Territory of Quintana Roo, for a total length of 165 miles. Although permanently monumented only at the two angles, it seems unlikely that the actual straight lines on the ground between the fixed points can ever hereafter be the subject of much dispute or serious difficulty between the two nations, but settlement of the issue over Article 7 of the 1859 convention may require compensation to be made by the great power to the little one.

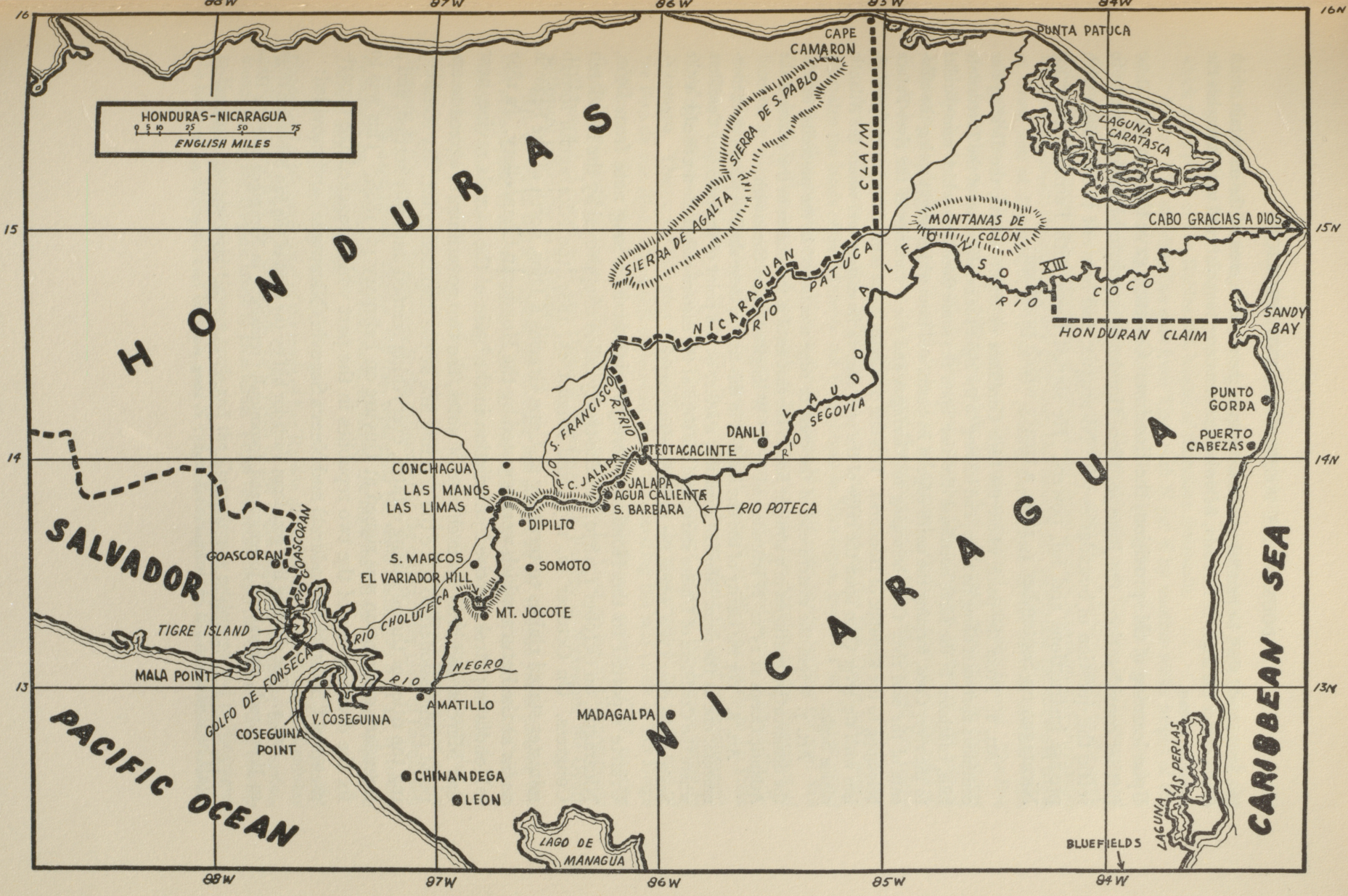
8. Honduras–Nicaragua

After independence, the first difficulty on this boundary seems to have arisen in November 1858, when Nicaragua complained that municipal authorities of San Marcos de Colón (Honduras) had repeated their intrusions into the Espino Valley, about one hundred and twenty-five miles from the Pacific. References to the Honduran border in the record of the Nicaraguan difficulty with Great Britain over the Mosquito Coast [1] seem to indicate that the frontier was in considerable doubt in 1860. Following decrees, claims, and correspondence in 1861 and negotiations in 1863 and 1865, both countries in January 1869 appointed commissioners [2] jointly to map and mark the whole frontier. The mixed commission met at San Marcos on July 4, 1869, and because that season of the year was not suitable for field work, agreed on a preliminary boundary convention to be submitted to their governments and, if approved, form the basis of the commission's work. The 7th Base recited that:

> Both Commissioners fixed their attention upon whether the river Coco, to its emptying into the Atlantic, should be the boundary line between the two Republics; and, observing that Nicaragua has been in exclusive possession of this river and the port of that name, the dividing

[1] See Sec. 12, this chap., *infra*.

[2] For Honduras, Francisco Medina; for Nicaragua, Fermin Ferrer.


HONDURAS-NICARAGUA
0 5 10 25 50 75
ENGLISH MILES
HONDURAS
NICARAGUA
SALVADOR
PACIFIC OCEAN
CARIBBEAN SEA
CAPE CAMARON
PUNTA PATUCA
SIERRA DE AGALTA
SIERRA DE S. PABLO
CLAIM
LAGUNA CARATASCA
MONTANAS DE COLON
CABO GRACIAS A DIOS
RIO COCO
HONDURAN CLAIM
SANDY BAY
NICARAGUAN CLAIM
RIO PATUCA
RIO LAUDO
RIO SEGOVIA
S. FRANCISCO R.
RIO FRIO
PUNTO GORDA
PUERTO CABEZAS
DANLI
TECOTACACINTE
CONCHAGUA
LAS MANOS
LAS LIMAS
R. C. JALAPA
JALAPA
AGUA CALIENTE
S. BARBARA
RIO POTECA
DIPILTO
GOASCORAN
RIO GOASCORAN
S. MARCOS
EL VARIADOR HILL
SOMOTO
MT. JOCOTE
TIGRE ISLAND
RIO CHOLUTECA
MALA POINT
GOLFO DE FONSECA
RIO NEGRO
COSEGUINA POINT
V. COSEGUINA
AMATILLO
MADAGALPA
CHINANDEGA
LEON
LAGO DE MANAGUA
LAGUNA LAS PERLAS
BLUEFIELDS
88W
87W
86W
85W
84W
16
15
14
13
16N
15N
14N
13N

line at that end shall be parallel to said river upon the northern crest of the mountain which forms one of the edges of its basin, following the same direction eastward until it reaches the Atlantic ocean.

Upon learning of this provision, the Honduran Congress gave the convention no further consideration. On June 30, 1870, Honduras appointed Ramón Uriarte to settle the question of boundaries with Nicaragua, and he went to Managua with precise instructions and full powers. He signed there with Fermin Ferrer for Nicaragua on September 1, 1870, a treaty which provided:

Art. 6. From the point where the high Cordillera of Dipilto starts, the dividing line continues northeast along its ridge, and leaving to the right the ramification of the Totecasinte hills, continues in the same northeast direction upon the same Cordillera which runs parallel to the river Coco, forming the north edge of its basin, and from which height spring the affluents of the said river Coco belonging to Nicaragua and the tributaries of the river Patuca belonging to the Republic of Honduras. This line continues in the same direction and parallelism with the river Coco upon the ridge of the said edge to its eastern end where the Atlantic plains begin.

Art. 7. From the eastern end of the crest or edge mentioned in the preceding article, the demarcation continues in a straight line to the east until it terminates in the waters of the Atlantic Ocean at 15°10′ N latitude and 83°05′ W longitude from Greenwich.

Art. 8. For the clarity of the line marked in this treaty, there shall be placed three monuments; one at the point called El Amatillo, another at the point of the principal Cordillera where the Cordillera of Dipilto starts, and the third at the eastern end of the north edge of the basin of the river Coco, where the Atlantic plains begin.

Uriarte reported to the Honduran foreign minister in a long note from León, Nicaragua, on October 1, 1870, but the treaty failed of approval by the Honduran Congress. On October 12, 1875, and August 25, 1887, the Nicaraguan foreign minister stated claims to territory at Cape Gracias á Dios, north of the Segovia as far as the Patuca, which were opposed by the Honduran Chancellery. In 1887 a Honduran patrol exercised jurisdiction in the basin of the Licuala ravine, near San Marcos, and after an exchange of notes, the two governments agreed to appoint commissioners to trace the dividing line at the disputed point. By considering the titles of the adjoining estates, everything seemed amicably settled, and a boundary convention was signed at Duyure on February 11, 1888.[3] This was to fix the dividing line of the two republics in the part which touched the departments of Choluteca (Honduras) and Nueva Segovia (Nicaragua) and provided:

Art. 1. The dividing line goes from Variador hill by the crest of the San Sebastian ridge to Jicote rock, the valleys Jocomico and Jocomiquito remaining in Nicaragua and the Hon-

[3] By Commissioners Alberto Membreño for Honduras and Salvador Castrillo for Nicaragua. Ratifications exchanged at Ocotal, July 15, 1889. *Col. de Trats. Int. de Nicaragua* (Managua, 1909), 175.

duran lands called Duyusupo beginning at the Variador monument; from Jicote rock the dividing line goes N 45° E 4580 yards to Tigre rock on the east bank of the river Negro, which is the point of Los Robles hill, a spur of Caguasca mountain.

Art. 2. The dividing line goes from Tigre rock N 54° E by another rocky height of the same ridge 1525 yards, San Sebastian remaining in Nicaragua and the Duyusupo lands in Honduras; thence the dividing line, leaving El Carrizal lands, near Somoto, in Nicaragua and the continuation of the Duyusupo lands in Honduras, goes N 12° E 6675 yards to the peak of La Caguasca mountain, monument of Carrizal and Oruse lands of Nicaragua and Duyusupo lands of Honduras; the dividing line goes from this monument, separating the aforesaid lands of Oruse and of Duyusupo, N 10°30′ W, passing the Licuala ravine and its eastern edge, 4664 yards to the Mesas de Asanda gorge, at the Oruse monument, opposite Isnaya. The line goes from this monument N 57° W 6100 yards, the valley of Isnaya remaining in Honduras and the lands of Agua Caliente in Nicaragua, passing the northeast corner of the site of Duyusupo, to the Puerta or Portillo de la Cruz monument, which is common to the sites of San Antonio del Despoblado in Nicaragua and the public lands of San Marcos and San Diego in Honduras.

Art. 3. Thence the line, following the remeasurement of the San Diego land, which separates the lands of San Antonio del Despoblado in Nicaragua, goes N 4°30′ E 4250 yards to Los Araditos monument. Thence the line goes N 32° E 3060 yards, leaving the said San Diego lands in Honduras and the lands of San Francisco de Los Arantes, of the indigenes of Somoto, in Nicaragua, to the monument at the corner of El Rodeo Grande. Thence the dividing line, according to the aforesaid remeasurement, goes N 31° W 1094 yards to La Peña monument, at the Rincón del Higo. The line continues always along the said remeasurement N 19° E 520 yards to the Portillo del Gobernador monument, leaving the Espino valley in Nicaragua. Thence the line goes N 8°15′ W 950 yards to the monument at the south end of the Plan de San Blas. From this monument the line, separating the said lands of San Diego in Honduras from those of San Antonio del Potrero in Nicaragua, goes N 37½° W, passing the Cahulotes wells, of the river San Martín, 4550 yards to La Lima ravine, at the monument at the corner of the sites of San Diego in Honduras and Potrero in Nicaragua, the Oyoto settlement remaining in Nicaragua.

Art. 4. From this monument the dividing line goes N 22°30′ W 2800 yards, passing the foot of Zapotillo, to the monument called El Alto del Rincón del Oyoto, in the site of Colón in Honduras, and continues according to the measurement of that site to the Portillo de Yaú monument, N 56°15′ W 2700 yards, the lands of San Ramón de la Munguía remaining in Nicaragua. Thence, separating always the lands of Colón in Honduras from those of La Munguía in Nicaragua, the line goes to the monument at the corner of the plain of Lagunillas, N 22°30′ W 4450 yards. Thence, the line, separating the same lands, goes S 78°45′ W to the monument on the edge of the Barranco, adjoining the high road from San Marcos village to Duyure village, 3600 yards.

Art. 5. From the aforesaid Barranco monument the line goes N 20°30′ E across the plateau of La Munguía, part of the lands of San Ramón de La Munguía remaining in Honduras but the greater part in Nicaragua, 2300 yards to the gorge opposite Chahuite del Carrizo, monument of the Duyure lands in Honduras. From this monument the dividing line, leaving in Honduras the aforesaid Duyure lands and the Cerro Grande settlement and in Nicaragua the lands of La Munguía and Icalupe, goes N 13°30′ E 8000 yards to the monument on Hatos

Viejos hill. Thence it goes N 31° W, leaving in Nicaragua the Icalupe lands and in Honduras those of Duyure 1700 yards to the monument on Batidero hill, where there is a monument of the sites of Icalupe and El Zapotal in Nicaragua. The line goes from Batidero hillock to the hill of La Sepultura or Cantón, S 83° W 1622 yards. From this hill the line continues N 63° W 10,700 yards to the Divisadero del Iraquí. In the lands of El Zapotal aforesaid, Los Valles, Los Capullos and Hatos Viejos remain in Nicaragua and in those of Duyure, the settlement of El Carrizal in Honduras. From the Divisadero del Iraquí the line goes towards the Río Grande called Choluteca, N 54° W 2870 yards ending in said river, the Iraquí valley in the aforesaid lands of El Zapotal remaining in Nicaragua. At this point, which is where the jurisdiction of the Department of Choluteca ends, opposite that of Nueva Segovia, the present demarcation ends.

Art. 7. The line which this Convention draws is provisional. Consequently, after being approved and exchanged by the Governments of both Republics, it shall be in force while there is no general boundary treaty between Nicaragua and Honduras.

Art. 8. The Valley of Isnaya remaining in Honduras and Oyoto in Nicaragua, as appears in Articles 2 and 3, the pending claims for intrusions of officials which may have been heretofore submitted are terminated.

In 1888 Nicaragua issued a decree which included provisions as to a portion of the Honduran Mosquito territory, at which Honduras protested. For the purpose of bringing about a harmonious demarcation of the frontiers of the two countries on the north and the part of the west line which was not covered by the 1888 agreement, and to settle the pending question as to the territory between the rivers Patuca and Segovia, the two nations signed at Managua on January 24, 1889,[4] a boundary demarcation convention which provided:

Art. 1. It is agreed that in case of not being able to accomplish the demarcation of the frontiers between the Republics of Nicaragua and Honduras by means of Commissioners named for the purpose, as was done for the dividing line between the Departments of Nueva Segovia and Choluteca according to the convention of Feb. 11, 1888, all the questions of boundaries between the two Republics shall be submitted to the decision of an arbitrator.

Art. 2. The Arbitrator shall fix the boundaries of the two Republics according to the following rules:

1st. The boundaries shall be the lines on which both Republics shall be in accord and which neither of the two disputes.

2nd. The boundaries shall be the lines indicated in public documents not contradicted by public documents of greater weight.

3rd. It is understood that each Republic is owner of the territory which at the date of independence constituted respectively the provinces of Nicaragua and Honduras.

4th. The Arbitrator to fix the boundaries shall consider the fully proved ownership of the territory and shall not give juridical value to *de facto* possession which one or the other party may allege.

[4] Signed by Foreign Ministers Jerónimo Zelaya for Honduras and Adrián Zavala for Nicaragua. Approved by President Evaristo Carazo of Nicaragua, Jan. 24, 1889. *Col. de Trats. Int. de Nicaragua* (Managua, 1909), 185.

5th. In the absence of proof of ownership the boundaries between the two Republics shall be those which the Arbitrator shall equitably fix.

6th. The Arbitrator may make equivalent territorial compensations, and even fix indemnizations, in order so far as possible to establish natural bounds.

Art. 4. [The Arbitrator shall be the President of the Republic of Salvador.]

Art. 5. [If the President of the Republic of Salvador cannot serve as Arbitrator, the parties shall select another Arbitrator within 60 days.]

Art. 7. The arbitral decision, whatever it may be, shall be considered a perfect, obligatory and perpetual treaty between the high contracting parties, and shall not admit of any appeal whatever.

This convention also failed of approval by Honduras.

There was no further progress toward a settlement until Nicaragua sent as her minister to Honduras José Dolores Gámez. After numerous conferences between him and César Bonilla, Honduran minister of foreign affairs, they signed at Tegucigalpa on October 7, 1894,[5] a boundary treaty which provided:

Art. 1. The Governments of Honduras and Nicaragua shall name Commissioners who . . . shall organize a Mixed Boundary Commission, to settle in an amicable manner all the pending doubts and differences and to mark on the ground the dividing line which shall indicate the frontier boundary of both Republics.

Art. 2. The Mixed Commission, composed of an equal number of members from the two parties, shall meet in one of the frontier towns . . . and shall there begin their work, in accordance with the following rules:

1st. The boundary shall be . . . those lines on which both Republics shall be in accord, or which neither of the two shall dispute.

2nd. The boundary shall also be . . . the lines indicated in public documents not contradicted by documents equally public of greater force.

3rd. It is understood that each Republic is owner of the territory which at the date of Independence constituted, respectively, the provinces of Honduras and Nicaragua.

4th. The Mixed Commission to fix the boundary shall give weight to the ownership of territory amply proved, and shall not allow juridical value to possession in fact which one or the other party may allege.

5th. In the absence of proof of ownership, the maps of both Republics and geographic or other documents shall be consulted. . . .

6th. The said Mixed Commission, if it deems it desirable, may take compensation and even fix indemnizations to succeed in establishing, so far as possible, natural well marked boundaries.

7th. On studying the plans, maps and other documents . . . the Mixed Commission shall give preference to those which it considers the more rational and just.

[5] Ratified by Honduras, April 22, 1895; ratified by Nicaragua, Jan. 3, 1895; ratifications exchanged at San Salvador, Dec. 24, 1896. *Trats. Vig. de Honduras* (Tegucigalpa, 1903), 337. *Col. de Trats. Int. de Nicaragua* (Managua, 1909), 237. *Rev. de Der. Int.* (Habana, 1938), XXXIII, 199. *Rev. de dr. int. et de lég. comp.*, XXXIV (1902), IV, 623.

8th. In case the Mixed Commission shall not be able to agree amicably on any point, it shall draw up a statement thereof in duplicate with recital of the allegations of both parties, and shall continue its study of the other points of the boundary line, omitting the point indicated, until it has fixed the dividing terminal at the very end of said line.

9th. The statements referred to in the preceding rule shall be sent by the Mixed Commission, one to each Government, to be kept in the national archives.

Art. 3. The point or points of demarcation which the aforesaid Mixed Commission shall not have settled, shall be submitted, not later than one month at the latest after the said Commission has concluded its sessions, to the judgment of an unappealable arbitration, which shall be composed of a Representative of Honduras and another of Nicaragua and of a member of the foreign Diplomatic Corps accredited to Guatemala, chosen by the first two or drawn by lot from nominees proposed one by each party.

Art. 4. The arbitration shall be organized in Guatemala City within 20 days after the dissolution of the Mixed Commission and shall begin its work within the next 10 days . . . the vote of the majority to rule.

Art. 5. If the foreign Diplomatic Representative shall excuse himself, the election shall be repeated, of another, within the next 10 days, and so on successively. All members of the foreign Diplomatic Corps being exhausted, the election may fall, by agreement of the commissioners of Honduras and Nicaragua, on any foreign or Central American public personage; and if such agreement shall not be possible, the controverted point or points shall be submitted to the decision of the Government of Spain, and in default of this, to that of any other of South America on which the Chancelleries of both countries may agree.

Art. 7. The arbitral decision, voted by a majority, whatever it may be, shall be considered a perfect, obligatory and perpetual Treaty between the High Contracting Parties and shall not admit of any appeal whatever.

Art. 11. . . . This Treaty shall have the duration of 10 years, in case of its execution being interrupted, within which term it cannot be revoked or modified in any manner, nor can the boundary question be settled by any other means.

In 1895 the Nicaraguan government published a map of the republic which showed the eastern end of the boundary with Honduras at the mouth of Laguna de Caratasca, some sixty miles northwesterly from Cape Gracias á Dios. The four members [6] of the mixed boundary commission met at San Marcos de Colón on February 24, 1900, and during a period of four years held in all eight formal sessions.[7] Working from west to east, they were able to agree on three sections of the line, from the Gulf of Fonseca on the Pacific northeastward to the Portillo de Teotecacinte, where the stream of La Zarzalosa and the river

[6] For Honduras, Pedro J. Bustillo and E. Constantino Fiallos, succeeded for the last meeting by Alberto Membreño; for Nicaragua, Salvador Castrillo, and Emilio Mueller.

[7] I at San Marcos, Feb. 24, 1900; II at San Marcos, June 12, 1900; III at Danli, Sept. 20, 1900; IV at Danli, June 26, 1901; V at Danli, July 4, 1901; VI at Danli, July 6, 1901; VII at Amapala, Sept. 14, 1902; VIII at Amapala, Aug. 29, 1904.

Limón, a tributary of the Poteca, have their common origin. The commission, finding [8]

belonging to both States that part of the gulf or bay of Fonseca adjoining their coasts, without there being between them the distance of 6 marine leagues, [and] after having made a careful examination of the territory (1) lying between the said gulf or bay of Fonseca and the Botija ridge, (2) from the peak of El Variador hill to Las Manos on the Dipilto Cordillera and (3) from Las Manos to Teotecacinte, drew up detailed descriptions and summarized the three agreed upon sections as:

(1) From the point known by the name of Amatillo, in the lower part of the river Negro, the dividing line is a straight line run toward the volcano of Cosiguina in an astronomical direction S 86°30′ W, 36.8 kilometers [23 miles] to the middle point of the bay of Fonseca, equidistant from the coasts of the two Republics on this side; and from that point follows the division of the waters of the bay along a line also equidistant from the said coasts until it reaches the middle of the distance lying between the northern part of Cosiguina (Monypenny) Point and the southern part of Tigre Island. From the said Amatillo [inland] the line continues along the center of the said river Negro upstream in a general east-northeast direction to its confluence with the river Guasaule, about 10 kilometers [6.21 miles]; from said confluence, the line runs in a general north-northeast direction along the center of the river Guasaule, also upstream, to its union with the river Torondano, at a distance of 26 kilometers [16.15 miles]; from the meeting of these two rivers the line continues along the center of the river Torondano to its confluence with the Quebrada Grande; along the bed of that ravine first and along that of its affluent the Peña Blanca ravine afterwards, to the head of the latter, at a pass situated 150 meters east of Las Dantas rock on the ridge of La Botija Cordillera, the general direction of this part being northeast and its length 12 kilometers [7.5 miles]. From the said pass the line runs east-southeast along the ridge of the said Cordillera, passing the height of El Cedro and the Grande rock, to end on the peak of El Variador hill, 5 kilometers [3.1 miles] away. To fix permanently this section of the dividing line there shall be erected two monuments, one at Amatillo, on the right bank of the river Negro and the other in the pass near Las Dantas rock.

(2) From the peak of El Variador hill [through Jicote rock, Tigre cliff, El Roble, the monument at Carrizal pass, the monument on the peak of El Mogote de Caguasca, the monument of Isnaya, the monument of La Estrechura de Azanda, the confluence of Licuala and Las Palmas ravines, Las Palmas ravine to the monument on its left bank, the southwest corner of San Antonio del Despoblado in Nicaragua, the edge of Las Lagunillas ravine, Los Araditos corner, the monument at the corner of El Rodeo Grande, the rock at the corner of El Higo, crossing the road from Somoto to San Marcos near El Espino, El Gobernador pass, the monument on the Plan of San Blas, crossing the river Comalí or San Marcos, above the Caulatos wells, the monument on the right bank of Las Limas ravine, Zapotillo hill, Rincón height at the northern end of Oyocto plain, Yarí pass, the monument at the east end of La Lagunilla prairie, the monument at the corner of Nuestra Señora de la Soledad de Duyure,

[8] Antonio Abad Ramirez y Fernández Fontecha, *Rectificación Documentada* (Tegucigalpa, 1908), Apen. 8, 147–168. Presbítero Antonio R. Vallejo, *Límites de Honduras con las Reps. de . . . Nicaragua* (New York, 1938), Tomo I (written in 1898). *U. S. For. Rel.*, 1914, p. 958.

the monument of Sabana Larga on Hatos Viejos hill, the monument of El Batidero, the peak of Cantón or Sepultura hill, passing Los Calpules valley, the monument of El Divisadero, the right bank of the river Zapotal 100 meters from the east side of the river Grande, or Choluteca, parallel to the east bank of the river Choluteca and 100 meters distant, Samayaque corner, opposite the mouth of the river Samayare, crossing Robles ravine, the monument of Horno, along the north side of Santa Lucia del Coyolar, Chinampa furnace, crossing the river Alauca Viejo or Algodonal to the monument on its right bank, up the bed of the river Algodonal, the monument of Soyatal on its right bank, the peak of the high hill La Picona, and Las Manos pass in the Cordillera of Dipilto]. Monuments shall be erected at the points indicated on the plan.

(3) From Las Manos pass in the Cordillera of Dipilto to the neighborhood of Jalapa and Teotecacinte there has been as common boundary of the territory of both Republics, since they were colonial provinces of Spain, the ridge of said Cordillera . . . and the line which divides naturally the waters (of springs and rains) on the backbone of said Cordillera [to wit, in general: from Las Manos along the ridge of the Cordillera of Dipilto or Jalapa towards the Portillo de Teotecacinte, along the heights of Volcán de las Barrancas, Las Trincheras, Filo de Dipilto, the highest part of the mountain between Dipilto and Conchagua, the peak of a sharp rock, the thick and very high peak Mogotón, Mogote Segundo, Mogote Cortado, the pass between the head of the river Horca in Nicaragua and the Potrero Grande ravine, affluent of the river San Francisco in Honduras, the pass between Las Vueltas [Honduras] and Santa Barbara [Nicaragua] ravines, the Malacate road, the edge which divides the Agua Caliente [Nicaragua] and Ochoa [Honduras] ravines, the highest part of Jalapa mountain, the throat in which rise the Aguila ravine [Honduras] and the river Solonli which flows toward Jalapa, and the pass through which goes the Teotecacinte trail, chosen as the end of this third section and conventionally designated for this purpose as the Portillo de Teotecacinte, in which have their common origin the Zarzaloza ravine [Honduras] and the river Limón, affluent of the Poteca.

From the Portillo de Teotecacinte northeastward to the Atlantic the commission could not agree, the Hondurans proposing that the line should run:

down the Limón to the river Guineo, down that river and the Poteca to the river Segovia, down the Segovia to a point 20 geographic leagues at right angles from the Atlantic Coast at about the confluence of the river Tríncara and the Segovia, southward on an astronomical meridian to the parallel of latitude which passes through the mouth of the river Arena and of the Lake of Sandy Bay, and on that parallel to the Atlantic . . . ,

while the Nicaraguans insisted that the line should go,

along the ridge of the Cordillera, following the line or shed which divides the river waters on either side, to the point in the Portillo whence springs the brook which forms the river Frío, down the bed of said brook and river until in the valley it joins the Guayambre and then the Guayape, lower down called the Patuca, along the middle of its waters until it meets the meridian which passes through Cape Camarón, and along that meridian until it loses itself in the sea, leaving to Nicaragua Swan Island.

The commission concluded definitely that it could not reconcile these divergent views, nor even agree on a common starting point on the Atlantic coast, and on August 29, 1904, drew up and signed its report, and dissolved.[9] This brought into operation the next stage under the Gámez-Bonilla Treaty, the arbitration tribunal of Articles 3, 4, and 5. The two arbiter representatives designated, Alberto Membreño by Honduras and José Dolores Gámez by Nicaragua, met at Guatemala City and at their first formal meeting on October 2, 1904:[10]

2. They proceeded to the election of the third Arbitrator and by common accord and pursuant to the requirements of Articles 3 and 4 of the Gámez-Bonilla Treaty, they designated the King of Spain; whose acquiescence should be asked in the name of both Governments through his Minister in Central America, because both representatives manifest the most absolute confidence in the decision of the Spanish Monarch and express to him their sincerest gratitude;

3. In case the King of Spain deigns to accept the office, it is understood that the rights conferred by the Gámez-Bonilla Treaty, basis of this meeting, belong exclusively to him; and the parties agree to give His Majesty the latitude which he deems desirable to make his award upon the cases and documents presented.

Pedro de Carrere y Lembeye, Spanish minister to the Republics of Central America, on October 4 communicated this choice to the two governments. President Manuel Bonilla of Honduras telegraphed from Tegucigalpa on October 6:

I am pleased to know that the King of Spain will decide the question of boundaries of Honduras with Nicaragua. No arrangement could be found more adequate for the facilities at his disposal to elucidate the matter and his uprightness. I hope with all my heart that he will accept the commission,

and General José Santos Zelaya, President of Nicaragua, telegraphed from Masaya on October 7:

It will be satisfactory and an honor for Nicaragua if the King of Spain will accept the designation of Arbitrator to settle the boundary dispute between Honduras and Nicaragua. There is no one with a better title and better knowledge than the Government of Spain to settle the dispute between two peoples dear to Spain.

The Spanish minister indicated on October 17 that the King would accept, and the arbiter representatives met again and adjourned finally on October 18, 1904. The Foreign Ministry in Madrid on November 11, 1904, wrote both governments confirming the King's acceptance, and asking for

the bases of the proposed arbitration, to show in complete manner the points upon which the award to be dictated should turn and other data pertinent to the case.

[9] *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 343.

[10] *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 363. *U. S. For. Rel.*, 1904, p. 542.

By royal decree of April 17, 1905, the King appointed an examining committee, to whom by December 16, 1905,[11] the parties presented their cases, documents, and arguments, asking respectively the same lines each nation proposed in the mixed boundary commission on July 4, 1901. On December 23, 1906,[12] one day short of ten years from the exchange of ratifications of the Gámez-Bonilla Treaty, Alfonso XIII handed down his decision which, after a long preamble and recital of facts, declared that:

> the dividing line between the Republics of Honduras and Nicaragua from the Atlantic to the Portillo de Teotecacinte where the Mixed Boundary Commission left it in 1901, not having been able to agree upon its continuation in their later meetings, shall be settled as follows:
>
> The extreme common boundary point on the Atlantic Coast shall be the mouth of the river Coco, Segovia or Wanks in the sea, next to Cape Gracias á Dios, considering as the mouth of the river that of its principal branch between Hara and the island of San Pío at the aforesaid Cape, leaving for Honduras the islets or cays lying within such principal branch before reaching the bar, and preserving for Nicaragua the south bank of the aforesaid principal branch with the aforesaid island of San Pío, with the bay and settlement of Cape Gracias á Dios and the branch or estuary called Gracias which runs to the bay of Gracias á Dios between the Continent and the aforesaid island of San Pío.
>
> From the mouth of the Segovia or Coco, the frontier line shall follow the thread or *thalweg* of that river up without interruption to the point of its confluence with the Poteca or Bodega, and from that point the said frontier line shall abandon the river Segovia, continuing by the thread of the said affluent Poteca or Bodega and following such waters up to their meeting with the river Guineo or Namaslí.
>
> From that meeting the dividing line shall take the direction which corresponds to the demarcation of the settlement of Teotecacinte, according to the bounds made in 1720, to end at the Portillo de Teotecacinte so that such settlement shall remain wholly within the jurisdiction of Nicaragua.

President Zelaya in December telegraphed President Bonilla of Honduras:

> By cable today I have learned of the award of the King of Spain in the boundary matter; and according to the decision, it seems that you have won the case, for which I congratulate you. A strip of land is worth nothing as compared with good harmony between sister peoples. The burdensome question of boundary having been settled in a manner as satisfactory as the arbitration was friendly, I hope that in the future there may arise nothing between our peoples which shall imperil our existing good relations.

Various officials of both states spoke with approval and praise of the arbitration and its result, but did nothing practical toward marking the line or otherwise executing the award, which affected about ten thousand square miles of territory.

[11] *Alegato de Nicaragua* (Guatemala, 1904). *Alegato de Honduras* (Madrid, 1905). *Réplica de Nicaragua* (Madrid, 1905). *Réplica de Honduras* (Madrid, 1905). *Resumen* (por Honduras) *de los Alegatos y Pruebas* (Madrid, 1906).

[12] *Laudo* (Tegucigalpa, 1907). *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 371. 100 *British and Foreign State Papers* 1096. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXV (1908), 563.

President Zelaya in his message to the National Legislative Assembly of Nicaragua on December 1, 1907 said:

> On Dec. 25, 1906 His Majesty the King of Spain handed down his arbitral decision in the matter of boundaries between this Republic and that of Honduras. My Government has seen with satisfaction so important a litigation terminated by the eminently civilized means of arbitration; and although it accepts that decision with pleasure, there being some obscure and even contradictory points, I have given instructions to Minister Crisanto Medina to request the appropriate clarification.

Nothing more appears to have been heard of this request, and it is not even known if it was ever transmitted to the Spanish government; certainly Honduras was not notified of any further hearing or advisement.

In January 1907 revolutionary movements in Honduras were thought by the Government to have been aided by President José Santos Zelaya of Nicaragua, and troops of both countries were sent toward the border. Before more than minor clashes had occurred, Mexico and the United States tendered their good offices [13] and secured peace in April, followed by the Central American Peace Conference at Washington from November 14 to December 20, 1907.

On April 25, 1911,[14] Fausto Dávila, Honduran minister of foreign affairs, wrote Nicaragua that, in conformity with the award, Honduras had established suitable officials in the part of the territory which the decision assigned to Honduras, with arrangements for inscribing real property titles there, and suggested proceeding to mark the small portion of the line which extended from the junction of the river Poteca or Bodega with the river Guineo or Namaslí to the Portillo de Teotecacinte, since the award had run the rest of the line along natural boundaries. Getting no reply, Honduras instructed Dr. Saturnino Medal, her chargé d'affaires in Managua, to make inquiries. On March 19, 1912,[15] Diego Manuel Chamorro, Nicaraguan minister of foreign affairs, wrote Secretary Dávila a long letter declaring, among other things, that (1) the Gámez-Bonilla Treaty fixed in a clear and precise manner the essential conditions upon which the arbitral decision should be obligatory on both countries, and when the two commissioners in violation of these requirements designated the king of Spain as sole arbiter (instead of a member of the foreign diplomatic corps at Guatemala City as third commissioner), the arbitration became null from the beginning and such nullity could not be considered overcome by express or tacit consent of the two governments, since the existing treaty could only be altered by a new agreement formally made, approved and ratified; (2) the award undertook to make use of powers of

[13] *U. S. For. Rel.*, 1907, II, 606–630.

[14] *Rectificación Documentada* (Tegucigalpa, 1908). *Límites entre Honduras y Nicaragua, Incidente Suscitado por Nicaragua* (Tegucigalpa, 1912), 3. *Mem. del Sec. de Rels. Ext., 1911* (Tegucigalpa, 1912), 8.

[15] *Límites entre Honduras y Nicaragua, Incidente Suscitado por Nicaragua* (Tegucigalpa, 1912), 19. *Rev. de Der. Int.* (Habana, 1938), XXXIII, 173–191, 204–264.

territorial compensation conferred exclusively on the mixed commission by the Sixth Rule of Article 2 of the treaty; (3) the award was contradictory in that after establishing as the line the *thalweg* of the principal branch of the river Coco, it declared that the islets and bays in such branch belonged to Honduras; (4) the award mentioned a settlement, Hara,[16] which did not exist, and considered that between San Pío Island and the place marked Hara on a map there was but one branch of the river, whereas in fact there were two or more, and (5) the actual city of Cape Gracias á Dios was not where the award indicated.

At this juncture General D. Luis Mena, Nicaraguan minister of war, rose against his government, and Dr. Medal, after expressing the friendship which his government and the others of Central America had for the Nicaraguan people and their desire to restore peace and public tranquility, helped materially to put down the revolt by force of arms. After the restoration of order, Secretary Chamorro told Dr. Medal that he might write President Bonilla that the award would now surely be executed. This assurance, however, still brought no practical results, and on October 11, 1913,[17] Honduras by its minister in Washington asked the good offices of the United States in securing the execution of the award. Dr. John Bassett Moore, for Secretary of State William Jennings Bryan on December 2, 1913, instructed Benjamin L. Jefferson, United States minister in Managua, to suggest to Secretary Chamorro that the United States would see with great satisfaction the early settlement of the unfortunate boundary misunderstanding and perceived no reason why the government of Nicaragua should decline to cooperate with the government of Honduras in bringing the matter to a speedy determination. Secretary Chamorro answered, repeating the arguments of his note of March 19, 1912, and said that his government, to demonstrate its wish for a quick and just end to the frontier disagreement, would accept with profound satisfaction the good offices of the government of the United States to submit the present case of the demarcation of the frontier to the final and unappealable decision of President Woodrow Wilson, under the legal requirements for such purpose. In December 1915 Honduras complained that Nicaragua was permitting a resident of the port of El Cabo to cut and carry away timber north of the Segovia River, and there ensued the usual fruitless diplomatic correspondence, with other border incidents, until in August 1918 Honduras started troops toward the frontier to reëstablish her jurisdiction in Las Trojes and Potrerillos (which they did on August 23). Thereupon, by telegram on August 21, 1918,[18] the United

[16] This supposed settlement appears on the 1874 map of Maximiliano V. Sonnenstern, Nicaraguan engineer, known to have been one of the maps before the examining committee.

[17] *U. S. For. Rel.*, 1918, pp. 11–20.

[18] *U. S. For. Rel.*, 1918, pp. 20–34; 1919, I, 114–123. *Mem. del Sec. de Rels. Ext., 1918–19* (Tegucigalpa), 12–15, Apens. Nums. 13–20, pp. 29–42.

States offered its good offices to secure an amicable adjustment, and invited each nation to send to Washington a representative, with maps and documents, to familiarize the State Department with the question in dispute, in informal conferences; not for a new arbitration but for an amicable discussion of the entire matter. Both states accepted on this basis, and the conferences which then began in Washington lasted until September 1920, with arguments back and forth, in the course of which Nicaragua at one time expressed its preference for a decision by the Council of the League of Nations rather than the United States State Department, which suggestion Honduras disapproved. The two presidents met at Amapala on November 16, 1920,[19] and agreed:

> Art. 2. The Governments of Honduras and Nicaragua shall arrange to terminate as soon as possible in a final manner and by friendly means the pending difficulty concerning the frontiers; and until this result is reached they shall respect the *statu quo* which they fixed on accepting the mediation of the Secretary of State of the United States.

Meetings in Washington were resumed in September 1921, and on September 29[20] Sumner Welles, chief of the section of Latin-American affairs in the United States State Department, announced that the ministers of the two states had that afternoon met in the offices of the section and agreed to submit to their governments, for solution of the controversy, a proposal to (1) submit the question of the validity of the king of Spain's award to the decision of the Chief Justice of the United States and (2) if the previous award should be declared invalid, to leave to the decision of the same sole arbitrator the determination of the frontier line, but that both ministers agreed that it would be preferable, if possible, to fix a line by direct agreement. Nicaragua indicated her acceptance of this arrangement in full, but Honduras objected that she could not agree to accept as open to discussion the validity of the king of Spain's award, and had instructed her permanent Legation to try to come to an agreement for decision by the mediator of the points agreed on in entering into the mediation, which accordingly got no further. There were more border incidents and threats during 1922, and on January 29, 1923,[21] the United States State Department suggested to the delegates of both nations that the respective governments should agree to accept the solution proposed by the Secretary of State as an unappealable and final judgment. This suggestion was accepted by Nicaragua but not by Honduras. In 1925 Honduras suggested to the United States that, as Nicaragua on accepting the 1906 award indicated that she would seek clarification upon some points of detail which she thought obscure or even contradictory, Honduras

[19] *U. S. For. Rel.*, 1920, I, 318–324; 1920, II, 854–872.
[20] *U. S. For. Rel.*, 1921, I, 234–237.
[21] *U. S. For. Rel.*, 1921, II, 554–564; 1922, I, 443–447; 1923, I, 362–364.

would accept the arbitration of the Chief Justice of the United States to decide, taking as an unavoidable basis the validity of the award, any controversy to which such obscure or contradictory points might give rise, in case they really existed. Nicaragua was upset in October 1925 by a military rising, and the proposal could not be presented. On March 31, 1929, a United States Marine Corps airplane from Managua, reconnoitering for rebels in camps along the Honduran border, claimed to have been fired upon by outlaws in the vicinity of Brajil, Nicaragua, and, in dispersing them by bombs, hit and almost completely burned the small settlement of Las Limas. Honduras said the town was not in the frontier area under dispute with Nicaragua but wholly and clearly Honduran, and on April 10 protested to the United States not only the bombing but three crossings of the frontier alleged to have been made by United States marines within a few days. Honduras also protested to Nicaragua against recent raids across the border by Nicaraguan regular soldiers. American Minister Charles C. Eberhardt reported to the State Department in Washington, and it was presently announced that representatives of Honduras, Nicaragua, and the United States were in amicable conference as to ways and means of coöperating with the Honduran army in putting an end to rebel and bandit activities along the frontier.

Direct negotiations between Honduras and Nicaragua were resumed in Tegucigalpa in 1930, and continued in Managua, where Foreign Minister Julián Irías and Dr. José Angel Ulloa, Honduran chargé d'affaires, signed on January 21, 1931,[22] a protocol which provided:

Art. 1. The Governments of Honduras and Nicaragua state their mutual acceptance of the Award of the King of Spain as it was handed down by him on Dec. 23, 1906.

Art. 2. The Governments of Honduras and Nicaragua hereby agree jointly that the tracing of the frontier fixed by the Award referred to in the preceding Article shall be entrusted to a Technical Commission to be formed by two Engineers, named one by the Government of Honduras and the other by that of Nicaragua, and presided over by an American Engineer designated by the Government of the United States.

Art. 3. [The Commission of Engineers shall have full authority to establish the dividing line between the two Republics from the Atlantic to the Portillo de Teotecacinte in conformity with the Award, establishing the line at the points which in the Award may require clarification and interpreting the meaning of the Award in those places in which its sense is not clear. In every doubtful case, on making the demarcation, the President of the Commission shall decide and his decision shall be unappealable.]

Art. 6. The Government of Honduras and that of Nicaragua agree that the decisions, resolutions and recommendations of the aforesaid Technical Commission shall be accepted as final and unappealable and that the dividing line which the Commission traces shall be accepted by both Governments as their true and final common frontier.

[22] *Amer. J. Int. Law*, XXV (1931), 327. *Survey of Int. Affairs, 1930* (London, 1931), 438.

Art. 9. [Any landed property of the indigenous tribes in territory subject to a change of sovereignty shall not be affected by such change.]

Art. 10. [Ownership of private property also shall not suffer any alteration by any change of sovereignty.]

Art. 12. [Concessions granted by either State now in force shall continue to be valid.]

The Nicaraguan foreign minister issued a pamphlet in support of this agreement, but President José María Moncada in a message to the Legislative Chambers in February attacked it in strong terms; and the Nicaraguan Congress on June 25, 1931,[23] voted to disapprove the protocol and declared further that

it is understood and determined that the Colegislative Chambers of Nicaragua do not give their acceptance to the Award of the King of Spain, handed down Dec. 23, 1906, since they consider and regard it as without validity because of multiple vices of form and matter with which it was prepared and pronounced, vices in due season pointed out and alleged by Nicaragua.

On August 24, 1933, Salvador offered to mediate, but neither country accepted. The boundary question uneasily slumbered again until September 8, 1937, when Nicaragua issued a series of seven air-mail stamps bearing a map showing as territory in dispute all of eastern Honduras as far north and west as the river Aguán in the Department of Olancho, at which Honduras felt so aggrieved that she nearly broke off diplomatic relations. Costa Rica, Venezuela, and the United States joined in offering friendly mediation on October 21,[24] and after conferences at San José during November succeeded in securing the signature there on December 10, 1937,[25] of a Pact of Mutual Offers suggested by the mediation commission,[26] which proposed:

1. To retire detachments or military units which were not usually or normally maintained in the frontier regions of both countries and in places near thereto before Aug. 1, 1937.

2. To refrain from all preparation for war and from all mobilization or concentration of troops.

5. To provide effective protection according to law to the nationals of the other resident in each country.

7. To prevent planning or fomenting of revolutionary movements against the other in the territory of each, especially in the frontier regions.

8. Not to solve the present conflict by armed means.

9. To solve the present conflict by pacific means as established by International Law. This offer does not affect the Honduran reservation made to the General Treaty of Arbitration signed on Jan. 5, 1929 in Washington, D. C.

[23] Approved by Executive, July 6, 1931.

[24] *U. S. Tr. Inf. Bull.*, Oct. 1937, No. 97, 4.

[25] *U. S. Tr. Inf. Bull.*, Dec. 1937, No. 99, 10; *ibid.* June 1938, No. 105, 162.

[26] Lic. Tobías Zúñiga Montúfar, Costa Rican Foreign Minister, President; Dr. Frank P. Corrigan of the U. S. A. and Dr. José Santiago Rodríguez of Venezuela.

On January 2, 1938, it was announced that Nicaraguan troops had been withdrawn from the Honduran border, as agreed; and in March it was said that Nicaragua had promised to stop the sale of the offending stamps, but they were still in circulation some months later. In January 1939 the three members of the mediation commission, which had been in recess since July 1938, called personally upon the presidents of both republics, to endeavor to get more favorable attitudes toward mediation, but made little headway. In May 1939 the Nicaraguan constitutional convention published a draft of a proposed constitution in which the boundary article went back to the lines of the province in 1821, and ignored altogether the king of Spain's award of 1906, at which again Honduras protested. The informal agreement growing out of the Pact of Mutual Offers expired December 10, 1939, and it was reported from Costa Rica that the reconvening of the mediation commission was very doubtful. Honduras and Nicaragua had both adhered in 1935[27] to the anti-war treaty of non-aggression and conciliation adopted by the American republics at Río de Janeiro on October 10, 1933,[28] which perhaps had some influence; and despite much printed argument and discussion[29] general relations between them continued friendly. Differences between Honduras and Nicaragua over rights in the Gulf of Fonseca will be considered in connection with Nicaragua's treaties with the United States.[30] The entire boundary is five hundred and three miles long.

Claims based upon disputed Spanish colonial administrative divisions were urged against generally admitted possession, with desirable plains in an Atlantic river valley as the chief object of contention. Unratified treaties and incomplete demarcations were followed by an arbitral award objected to for thirty-three years by the losing nation. The dispute is quiescent at present, but the fundamental difference is unresolved, and the whole question may flare into active hostility again at any moment, with border incidents or other supposed grievances between the neighbors.

9. Honduras–Salvador

(*See map, p. 112, supra*)

From the dissolution of the Federation of Central America in 1838 the relations between Honduras and Salvador were repeatedly being cemented by words and shattered by deeds; treaties of friendship and alliance were freely signed in

[27] Honduras, Decr. 39, Jan. 22, 1935. *Bol. Leg.* (Tegucigalpa, 1935), Ser. I, Num. 7, 2. Nicaragua, Feb. 15, 1935. *La Gaceta*, Año XXXIX, 772–805 (Managua, 1935).

[28] See Chap. III, Sec. 156, *infra*.

[29] Gerónimo Ramirez Brown, *La Hora Actual* (Managua, 1937). Luis Anderson, *Validez y Fuerza Obligatoria del Laudo* (Tegucigalpa, 1938). Pedro Rivas, *Historia Cartografica Documentada* (Tegucigalpa, 1938).

[30] See Sec. 13, this chap., *infra*.

peace and rapidly broken by war. A treaty of June 5, 1839, purported to re-establish the relations existing before the recent conflict and was made ineffective by the war which broke out soon after; a treaty of December 9, 1841, was cancelled by the war of 1845; another of November 27, 1845, was ended by war within a month. A treaty signed at Cojutepeque on June 25, 1854, agreed on reciprocal recognition of the sovereignty and independence of the two nations. Always the relations between Honduras and Salvador have suffered from charges of varying degrees of interference by the politicians of each in the internal affairs of the other, with supposed fomenting of revolutions, harboring of fugitives, and incursions and other border incidents. Following a dispute in June 1861 between the towns of Jocoara in Honduras and Arambala and Perquín in Salvador over an area of public lands between them, a treaty was signed on July 1, 1861, which provided for two commissioners to settle the question. General Castro Alvarado for Honduras and José Francisco Sancho for Salvador, met, viewed the ground in dispute, and gave the region of Naguaterique to Jocoara, setting monuments on the approved line from the foot of Ardilla Hill to Arambala Hill. During their presence at the frontier, the towns of San Juan de Yarula in Honduras and Mianguera and Cacaopera in Salvador laid a similar boundary dispute before them, but the commissioners decided that their powers did not permit them to pass upon this further question. The ancient dividing line of the colonial provinces was said to be the east side of the river Negro (native, Qusaguara). The two states signed at Santa Rosa, Salvador, on March 25, 1862,[1] a treaty of peace and friendship which provided:

Art. 2. The two contracting Republics will forever continue united in the bonds of the most indissoluble fraternity, affording each other, upon all occasions, mutual aid and succor.

Art. 3. The Republics . . . form an alliance offensive and defensive in cases of external war, and engage to afford each other every kind of means of assistance whenever they may be demanded by the Government requiring them for the preservation of internal order.

Art. 5. The two contracting Republics being desirous not to expose their amity to the risks of foreign questions, considering themselves under all circumstances friends and sisters, engage that they will in no case take contrary sides, the one against the other, in matters of any nature that may be brought before them by another nation or Government.

Art. 6. [Both promise to deliver up persons guilty of common offences, and to honor requisitions properly drawn.]

Art. 8. The individuals of one Republic who have found asylum in the other, on account of political opinions, shall be centralized by the Republic which grants the asylum, in order to avoid disturbances that might occur upon the frontier.

Art. 9. If contrary to what may be expected, any cause for war should unfortunately occur between the two contracting Republics, war shall not be declared until the following

[1] Ratifications exchanged at Santa Rosa, May 15, 1862. 52 *British and Foreign State Papers* 949.

formalities have been complied with: 1. [The State offended must forward its complaint and the offender send its explanations, at least two notes passing from either side.] 2. [The Governments will bring the matter to their Legislatures, that one may declare whether it is a *casus belli* and the other whether satisfaction ought to be given.] 3. These declarations having been made according to the rules of international law, the Governments engage in the most positive manner to appoint one or two arbitrators, with a third in case of disagreement, who shall settle the question. The arbitrators must necessarily be some of the Governments of Central America. 4. The award of the arbitrator or arbitrators, must be religiously fulfilled by both Governments as a sacred engagement, affecting the most valued rights of society, the preservation of peace and harmony with a sister Republic. 5. [If one Government refuses to appoint an arbitrator or to fulfil the award, the other shall address an *ultimatum* to it, and if not answered in 2 months may declare war, hostilities not to commence until 3 months thereafter.]

In June 1869 Commissioners Emeterio Chavez for Honduras and José Francisco Sancho for Salvador settled the frontier between Similatón, Jocoara, and Colomoncagua in Honduras and Arambala, Perquín and Torola in Salvador, and marked the approved line from Mal Paso Hill to the river Negro, and down that stream to the confluence of the river Pichigual. On June 15, 1869, the same two commissioners met at Champate between Colomoncagua and Torola to consider the line there, but after five days' discussion could not agree and separated.

In February 1871 Honduras complained that Salvador had for six years refused extradition of murderers and concentration of political refugees, and suspended all treaties with her. Rumors of war gained currency, and caused Henry Baxter, United States minister at Tegucigalpa,[2] apparently at the suggestion of the Honduran government, to call to the attention of the Salvadorian minister of foreign affairs Article 14 of the Treaty of July 4, 1864,[3] between Honduras and the United States for the construction of an interoceanic railway, which provided that the United States should guarantee the entire neutrality of the railway; but Secretary of State Hamilton Fish wrote that it had not been supposed that the obligation of the United States became perfect until the completion of the railway, then still under construction. Honduras declared war on Salvador on March 5, 1871, putting an end to the treaty of March 25, 1862. On July 31, 1871, Francisco Alvarado, Honduran minister at San Salvador, proposed to Salvador the formation of a single republic of the two states, with one capital, treasury, armaments, national assembly, and public service, and common ownership of the interoceanic railroad of Honduras. The Constituent Assembly of Salvador authorized the executive to negotiate with Honduras upon the project of fusion and to report to the legislature. The negotiators met but once, on September 5, 1871. A treaty of August 18, 1871, supporting the principles of arbi-

[2] *U. S. For. Rel.*, 1871, pp. 572–581, 684–696.

[3] See Sec. 4, this chap., *supra*.

tration and no intervention was not ratified. On March 25, 1872, Honduras declared itself in a state of defensive war against Salvador, whereupon Salvador declared war on Honduras on April 25, 1872,[4] reciting, among other grievances:

4. It is of public notoriety that the Government of Honduras is constantly intriguing to alter the public order in Salvador and in our friend and ally the Republic of Guatemala, its principal object being the overthrow of the democratic institutions which exist in both Republics, to which end it has welcomed all the elements in Central America hostile to liberal principles.

Salvador on June 23, 1874, issued a decree which provided that:

the Government of Honduras having proposed to modify the jurisdictions of both countries over their territorial sea for the actual pursuit of vessels suspected of carrying contraband, to the detriment of the fiscal interests of both Republics, and desiring to wipe out completely this danger to the collection of customs, it is Decreed that

1. The jurisdiction of Salvador over the territorial sea in the Gulf of Fonseca is modified so that Honduran guards may enter in actual pursuit of vessels suspected of contraband, consequently being permitted to capture them, try the personnel and condemn the goods whose secret introduction into Honduran territory may have been attempted, as if the capture had been made in the sea of that Republic.

2. The authorities and guards of Salvador may modify for the same end and on the same terms the maritime jurisdiction of Honduras; and

3. The present decree shall take effect from the receipt in the Foreign Ministry of a decree in similar terms dictated by the Government of Honduras.

A revolution in Gracias, Honduras, on December 16, 1875, turned out President Ponciano Leíva and his government and installed as President General José María Medina, who, reciting that Guatemala and Nicaragua had kept hands off but that General Santiago González, president of Salvador, whose government since it was established in 1871 by the efforts of Honduras had been a bad influence in Honduras, had sent troops to support the Leíva regime, joined Guatemala [5] in war against Salvador on April 1, 1876.[6] Honduras and Salvador signed at Tegucigalpa on March 31, 1878,[7] another general treaty of peace and friendship which provided for (Article 1) loyal and sincere peace and friendship, with unified external policy, (Article 3) complete defensive alliance in case of external war, either with any of the Central Republics or any foreign nation, (Article 4) the offer of good offices and mediation in case of any disagreement between any of the states of Central America, (Article 5) not permitting emigrants or discontented politicians to use the territory of one to disturb the peace and security of the

[4] 65 *British and Foreign State Papers* 655.
[5] See Sec. 6, this chap., *supra*.
[6] 67 *British and Foreign State Papers* 982.
[7] Ratifications exchanged at Tegucigalpa, Dec. 17, 1880. *Col. de Trats. del Salvador* (San Salvador, 1884), 207. 72 *British and Foreign State Papers* 955. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 195.

other, (Article 16) extradition for specified crimes, except of their own nationals, and in no case for political crimes, and (Article 34) in case of any disagreement, no acts of reprisal until after exhausting the pacific means of verified statements of complaint and arbitration by any of the governments of Central America or of the American continent. The two nations also signed at Tegucigalpa on the same March 31, 1878,[8] a treaty to prevent smuggling of foreign goods in the Gulf of Fonseca and of spirits on the land frontiers, which caused so much damage to the fiscal interests of both countries, which provided:

Art. 1. Traffic in foreign goods in small vessels is absolutely prohibited between the ports of La Unión and Amapala. . . . By small vessels is understood any which carry less than 50 arrobas [1250 pounds].

Art. 2. For traffic in foreign goods in larger vessels between La Unión and Amapala, or *vice versa*, permits will be furnished by the respective administrators gratis and duly legalized.

Art. 3. Manufactories of spirits may not be established on the frontiers or in the uninhabited boundary regions of the Republics of Salvador and Honduras, within a distance of 4 leagues to the interior of the respective territories. [Officials] may penetrate the respective territories, within the limits indicated and shall give mutual aid in the pursuit of contraband, the destruction of secret manufactories and the capture of the personnel in order that they may be punished by the competent authorities. The same provision is applicable to the administrators of the customs and guard commanders with respect to the smuggling carried on in the Gulf of Fonseca, whose waters are free to both Republics for the purposes of this provision.

A preliminary convention signed at Tegucigalpa on December 18, 1880,[9] to settle finally the boundary incidents between six specified frontier towns and to fix the national boundaries for the whole length of the line of the questioned lands, provided:

Art. 1. The high contracting parties agree to submit the questions of boundaries between Opatoro and Polorós, between Santa Elena or Jucuára and Arambala and between Perquín and San Fernando, to the final decision of an arbitrator named by both parties.

Art. 2. By common agreement they name as arbitrator the President of the Republic of Nicaragua, General Joaquín Zavala, whom they consider suitable to judge and decide the pending question, as well for his eminence as for his understood impartiality.

Art. 3. [Each government shall present to the arbitrator within 60 days of the last ratification of this Convention, an exposition of the controverted points, with the documents supporting their right and a protocol of the conferences held by their respective Commissioners in June of this year.]

Art. 6. It is agreed that the arbitrator, for the whole of the line of the lands whose ownership the said towns question, shall fix also the national boundaries of both States.

[8] Ratifications exchanged at Tegucigalpa, Dec. 17, 1880. *Col. de Trats. del Salvador* (San Salvador, 1884), 227. 72 *British and Foreign State Papers* 965. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 203.

[9] Signed by Ramón Rosa for Honduras; by Salvador Gallegos for Salvador. Ratifications exchanged at Tegucigalpa, April 29, 1881. *Col. de Trats. del Salvador* (San Salvador, 1884), 230.

On August 23, 1881,[10] at Tegucigalpa, the two governments signed an additional convention agreeing (Article 1) to an indefinite extension of the period of sixty days specified in Article 3 for the presentation to the arbitrator of the documents of both parties; and (Article 2) to notify the arbitrator officially when the additional convention had been ratified, so that he might begin to consider the documents which had been or might be submitted to him. Both states apparently submitted their documents without any great show of interest; and whether on this account, or because President Zavala felt that he should have some more formal agreement by both parties to an extension of the term for the arbitration, no award was ever rendered. On March 20, 1884, Commissioners Francisco Cruz for Honduras and General Lisandro Letona for Salvador met and discussed the line between the same towns, and upon a survey and detailed report by A. F. Byrne, a Canadian civil engineer, they agreed upon a provisional line to be sanctioned as a *status quo*. On April 10, 1884, they signed a treaty which provided:

> Art. 2. The maritime boundary line between Salvador and Honduras starts from the Pacific, cuts in half the distance between Meanguera, Conchaguita, Martín Pérez islands and Zacate Point of Salvador and Tigre, Zacate Grande, Inglesa and Esposición islands of Honduras and ends at the mouth of the Goascorán.

After warm discussions, however, the treaty was disapproved by the Honduran Congress.

Jerónimo Zelaya, Honduran minister of foreign affairs, and Jacinto Castellanos, Salvadorian minister to Honduras, signed at Tegucigalpa on September 28, 1886 [11] a convention which provided:

> Art. 1. The Governments of Salvador and Honduras shall each nominate a lawyer and a surveyor to determine the boundary line dividing the two Republics, in accordance with the protocol of the Conferences between General Lisandro Letona and Francisco Cruz, and the several documents which were then put forward by the two parties.
>
> Art. 2. The Commissioners shall meet in San Salvador within 3 months from the date of exchange of ratifications of this Convention.
>
> Art. 3. If the Commissioners should be unable to agree, the differences which may arise between them shall be submitted for the decision of an Arbitrator, who shall be the Government of any nation in amity with the two Republics, or the Diplomatic Corps accredited in Central America, from whose decision there shall be no appeal.
>
> Art. 4. The boundary line demarcated by the Commissioners in common accord shall

[10] Ratified by Honduras (Leg. Decr. 7), March 6, 1883; ratified by Salvador, Feb. 25, 1882. *La Gaceta* (Tegucigalpa, 1883), Año VII, Num. 207, 1. *Col. de Trats. del Salvador* (San Salvador, 1884), 232. *Rev. de dr. int. et de lég. comp.*, XXXIV (1902), 561.

[11] Ratified by Honduras (Pres. Decr. 11), Feb. 9, 1887; ratified by Salvador, April 25, 1887; ratifications exchanged at San Salvador, July 27, 1888. *La Gaceta* (Tegucigalpa, 1887), Año X, Num. 368, 2. 81 *British and Foreign State Papers* 632.

be held to be actual and permanent and both Governments shall be obliged to respect it and conform to it without reserve of any kind.

Art. 5. Until the completion of the definitive demarcation which is the object of the present Convention, the boundary line as agreed upon in 1884 and sanctioned by the *statu quo* agreed to by the Governments of the two Republics, shall be guarded and respected by the authorities and people of the frontier districts, to the entire exclusion of the line traced by the Commissioners Lisandro Letona and Francisco Cruz, which was not approved by the Congress of Honduras.

The old trouble over the Dolores site between Opatoro and Polorós broke out again, and in November 1888, Honduras sent Lic. Manuel Colindres and Engineer Aracil y Crespo to join Salvador's Manuel I. Morales and Santiago I. Barberena in laying out the line between the two towns. They met at Guanacastillo to study the question and though they could not agree and accomplished nothing, Barberena published in 1889 a detailed description of the line,[12] with agreements and differences, for the northeast-southwest boundary of 88.3 kilometers (54.82 miles) from the mouth of the river Guascorán in La Unión bay 68.3 kilometers (42.4 miles) up to the confluence of the river Guajiniquil, up that river 19 kilometers (11.8 miles) to its head, and 1 kilometer (0.62 mile) to Ribitá peak; and for 68 kilometers (42.2 miles) of the northwest-southeast boundary from Ribitá peak to López Hill, down the river Torola, up the river San Antonio, up the Guaralape stream to its source at Cerro Colorado, to Mal Paso de Similatón, a secondary peak of Sapamaní, Sabaneta de la Montaña de la Isla, Cerro de la Ardilla, the foot of Napansapa Hill, Olosícula Hill, and Chagualaca volcano, the end of the Arambala-Perquín section. The length of the whole line from Tigre Island to Brujo Cerro, at the corner of Honduras, Salvador and Guatemala, is 378 kilometers (235 miles). The two governments signed at Tegucigalpa on January 19, 1895,[13] a boundary convention which provided:

Art. 1. The Governments of Honduras and Salvador shall name commissioners who, with the proper authority, shall organize a Mixed Boundary Commission charged to resolve, in an amicable manner, all the pending doubts and differences and to mark on the ground the dividing line which indicates the frontier boundary of the two Republics.

Art. 2. The Mixed Commission, composed of an equal number of members for both parties, shall meet in one of the frontier settlements which offers best conveniences for the work, and shall there begin its labors, with attention to the following rules.

1st. The boundaries between Honduras and Salvador shall be the lines on which both Republics shall be in accord or which neither of the two disputes.

[12] Presbítero Antonio R. Vallejo, *Límites de Honduras con las Reps. de . . . Salvador* (Tegucigalpa, 1926), II (written in 1899).

[13] By General Manuel Bonilla for Honduras and Dr. Jesús Velasco for Salvador. Ratified by Honduras, July 6, 1895; by Salvador, May 3, 1895; ratifications exchanged at San Salvador, Jan. 20, 1896. *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 321. *Pactos Ints. de El Salvador* (San Salvador, 1910), I. 131. *Rev. de dr. int. et de lég. comp.*, XXXIV (1902), 624.

2nd. The boundaries between Honduras and Salvador shall also be the lines indicated in public documents not contradicted by equally public documents of greater force.

3rd. It shall be understood that each Republic is owner of the territory which at the date of independence constituted respectively the provinces of Honduras and Salvador.

4th. The Mixed Commission, to fix the boundaries, shall consider the fully proved ownership of the territory and shall not give juridical value to *de facto* possession which one or the other party may allege.

5th. In the absence of proof of ownership, they shall consult the maps of both Republics and geographic or any other sort of documents, public or private, which may throw any light; and the boundaries between the two Republics shall be those which in view of such study the Mixed Commission shall equitably fix.

6th. The Mixed Commission, if it thinks it desirable, may make compensations and even fix indemnization in order so far as possible to establish well marked natural bounds.

7th. In its study of the plans, maps and other similar documents submitted by both Governments, the Mixed Commission shall give preference to those which it considers more rational and just.

8th. In case the Mixed Commission cannot agree amicably on any point, it shall set it forth separately in two special books, signing a double detailed minute, with recital of the allegations of both parties, and shall continue its study of the other points of the demarcation line, omitting the indicated point, until it has fixed the last dividing point at the end of the said line.

9th. The books referred to in the preceding clause shall be sent by the Mixed Commission one to each Government, for keeping in its national archives.

Art. 3. The point or points of the demarcation which the Mixed Commission of this treaty shall not have settled shall be submitted at the latest one month after the sessions of the said Commission shall have been concluded to the decision of an unappealable arbitration, which shall be composed of one representative of Honduras and another of Salvador and a member of the foreign Diplomatic Corps accredited to Guatemala, chosen by the first two or by lot from two proposed one by each party.

Art. 4. The arbitration shall be organized in Guatemala City within 20 days following the dissolution of the Mixed Commission, and shall begin their work within 10 days, . . . the vote of the majority being law.

Art. 5. [If the Diplomatic representative shall excuse himself, another shall be selected; if the members of the foreign Diplomatic Corps shall be exhausted, the selection by agreement of the Commissioners may fall on any public personage, foreign or Central American; and if this is not possible, the controverted points shall be submitted to the decision of the Government of Spain, or of any Government of South America on which the Chancelleries of the two countries shall agree.]

Art. 7. The arbitral decision, adopted by a majority, whatever it may be, shall be considered a perfect, obligatory and perpetual treaty between the High Contracting Parties, and shall not permit of any appeal.

Art. 11. . . . It is agreed that this Treaty shall have a duration of 10 years, in case its execution shall be interrupted, within which period it cannot be revised nor modified, in any manner, nor can the question of boundaries be settled by any other means.

The mixed commission not having been organized until after 1900, the two countries signed at San José de Costa Rica on September 24, 1906,[14] a convention providing:

Art. 1. The Boundary Convention (of Jan. 19, 1895) shall continue in force for 10 years from this date, and the Governments interested in it shall procure the complete execution of it before that time.

Art. 2. The present Convention shall be taken to be agreed to *ad referendum* by the Delegate of Salvador; and, approved in any way by the respective Governments, it shall enter into effect without the necessity of exchange, upon only the reciprocal communication which the respective Chancelleries shall make, reporting their approval.

At the beginning of July 1908 Honduran revolutionists came in over the border from Salvador and engaged in several clashes with Honduran government troops, in an alleged plan to form a single government for Guatemala, Honduras, and Salvador and then attack Nicaragua. President Cleto González Víquez of Costa Rica, whose geographical position seemed to leave him somewhat out of this particular plotting, called the situation to the attention of the Central American Court of Justice,[15] which had been established in Cartago, Costa Rica, on May 25, 1908, and was awaiting its first business. Although no case or suit was by this report submitted to its jurisdiction, it did not hesitate to initiate diplomatic action. On July 8, 1908, in a circular telegram to the presidents of Guatemala, Honduras, Nicaragua, and Salvador, the Court declared that, although in the absence of any complaint by an interested party it could not act as arbitrator, it was obliged by its high mission to exercise its amicable and well-wishing intervention for the maintenance of peace, appealed to the fraternal sentiments of the presidents to prevent the events in Honduras from giving rise to international complications, and reminded them that, to that end, it would be sufficient to have recourse to arbitration according to the treaty of December 20, 1907. At the same time the Court sent a telegram to the president of Costa Rica asking him, as the best qualified for the purpose, to exercise his good offices for concurrent action by the governments of Central America for a pacific solution of the conflict or to submit the affair to the arbitration of the Court.[16] On July 9 Nicaragua and on

[14] By Dr. Sotero Barahona for Honduras and Dr. Salvador Gallegos for Salvador. Approved by the Government of Honduras, Oct. 10, 1906, note of Oct. 11, 1906; approved by the Government of Salvador, Oct. 17, 1906, note of Oct. 24, 1906. *Trats. Vig. de Honduras* (Tegucigalpa, 1913), 329. *Pactos Ints. de El Salvador* (San Salvador, 1910), I, 128. *Mem. del Sec. de Rels. Ext. 1911* (Tegucigalpa, 1912), 20.

[15] José Astúa Aguilar of Costa Rica, President, Salvador Gallegos of Salvador, Angel María Bocanegra of Guatemala, Carlos Alberto Uclés of Honduras and José Madriz of Nicaragua.

[16] *Comunicaciones Cruzadas entre la Corte Suprema de Just. Centro-Amer. y el Gob. de El Salvador* (Cartago, 1908). *Amer. J. Int. Law*, II (1908), 835–841.

July 10 Honduras in long telegrams complained to the Court against Salvador and Guatemala. Nicaragua declared that she was interested in the dispute as a party to the Washington treaties, because the matter concerned the maintenance of peace in Central America; as a neighbor of Honduras; and because of the possible participation of emigrants from Nicaragua who might later trouble her own tranquility; she also declared that the governments of Salvador and Guatemala were the instigators of the Honduran revolutionary movement, and asked the Court to take appropriate measures. Honduras alleged that the governments of Salvador and Guatemala had protected and stirred up the revolutionary movement against her national authorities and had failed, contrary to Article 17 of the treaty of December 20, 1907, in non-intervention and in prosecuting the Hondurans who had prepared in their territories civil war against their own country; she also accused them of having violated neutrality and of being responsible for the armed conflict then existing in Honduras, and offered to prove her statements. Upon these telegraphed pleas, the Court considered a case presented, and on July 13, 1908, issued, also by telegraph, two interlocutory decrees: (1) to Honduras to present by telegraph the proofs on which it based its complaint, and, as rules to fix the *status quo* pending final decision, to Salvador and Guatemala to (*a*) refrain from any military measure or movement, naval or land, (*b*) confine in one place all suspected Honduran emigrants, (*c*) prevent hostile preparations within their territories, (*d*) prosecute offending persons, (*e*) disarm and confine any revolutionary force, (*f*) discharge any emigrant officers in their service, and (*g*) reduce their military forces to ordinary size, and to Honduras to refrain from any act of hostility against those two; and (2) to Nicaragua asking for the necessary explanatory data and, as rules to fix the *status quo* pending final decision, to Salvador, Guatemala, and Honduras, to (*a*) refrain from any act which involved violation of neutrality as regards Honduras, (*b*) prevent assistance in their territories to the revolutionary movement, (*c*) confine in one place all suspected exiles, (*d*) proceed against all offenders, (*e*) reduce their armies to ordinary size, (*f*) discharge any emigrant officers in their service, (*g*) disarm and intern any revolutionary force, and (*h*) refrain from any hostile act in their mutual relations. There was neither overt acceptance of nor protest against these decrees by any of the nations involved, but the revolution in Honduras promptly subsided. Honduras, Salvador, and Guatemala sent representatives [17] to Cartago to present to the Court the case [18] upon Honduras' complaint only; and after receiving testimony and documents relating to events beginning in May 1907 and hearing arguments,

[17] Salvador Corleto for Honduras; Esteban Castro and Manuel Castro R. for Salvador, and Carlos Salazar for Guatemala.

[18] *Demanda Intentada de Honduras* (San Salvador, 1908).

the Court met on December 19, 1908,[19] and voted separately on each of eleven points submitted by the President. On two questions as to the allowance of what amounted to demurrers by Guatemala to the sufficiency of the complaint, the Court was unanimous in rejecting the plea. Six questions, relating to the violation by Guatemala of Article 17 of the treaty of December 20, 1907, the protecting or fomenting actively or negligently by Guatemala and actively by Salvador of the Honduran insurrection, the award of damages against Guatemala and of costs against both dependents, were decided in the negative by the votes of four judges against that of the judge from Honduras. Three questions relating to the violation by Salvador of Article 17 of the treaty of December 20, 1907, the protecting or fomenting negligently by Salvador of the Honduran insurrection and the award of damages against Salvador, were decided in the negative by the votes of three judges against those of the judges from Honduras and Nicaragua. The Court subsequently prepared and issued as of December 19, 1908, a long statement of (first part, eleven chapters) the submission, facts, and proofs in the case, (second part, six chapters) the doctrine and rules applicable, and (third part, three chapters) the final conclusions, winding up with a so-called decision, signed by the three majority judges only, which declared:

> Art. 1. The pleas of inadmissibility of the complaint and of insufficiency thereof to begin the action, as entered by the representative of the Guatemalan Government, are declared inadmissible.
>
> Art. 2. The Governments of the Republics of Salvador and Guatemala, the high defendants, are acquitted of the charges made against them in this suit and it is therefore declared that there are no grounds for holding them responsible as demanded by the high plaintiff and no party is sentenced to pay costs.

Although singularly unjudicial from the beginning, the action of the Court may have averted war in Central America on this occasion, but the entire proceeding, of course, hardly tended to improve relations between the opposing parties.

Land disputes between the frontier towns were renewed in 1931, and especially between Santa Elena, Honduras, and Arambala, Salvador, in March 1916 over the construction by Salvadorians of a hermitage at Nahuaterique Pass, between those two towns and about three leagues from the river Neoro. This dispute brought about the appointment of the mixed commission [20] under the 1895 convention; they met at San Miguel in the neighborhood of Nahuaterique on May 20, 1916, and proceeded, at first together and then separately, to examine

[19] *Sentencia, Corte de Justicia Centroamericana* (San José, 1908). Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., V (1912), 325–359. *Rec. gén. de dr. int. pub.*, XVI (1909), 99–107. *Arch. Dipl.*, 3e Sér., CIX (1909, I), 245. "Final Conclusions and Award," *Amer. J. Int. Law*, III (1909), 434–436, 729–736. *Case and Comment* (Rochester, 1914), XXI, 556.

[20] For Honduras, Dr. Romulo E. Durón and Engineers Medardo Zúñiga and Luis Paz; for Salvador R. Rafael Antonio Orellana and Engineers Francisco Espinal and Pedro S. Fonseca.

the line. Honduras on May 2, 1916, proposed a further extension of the 1895 convention for such time as might be necessary, to which Salvador replied that she would answer later, but thought that the near expiration of the time would not hinder in any way the mixed commission from carrying on its work and making a final decision of the pending boundary question. While the Honduran members of the mixed commission were finishing their formal study of the disputed points, the Salvadorians in July 1916, with leave, withdrew from the field, it having been agreed between the Chancelleries of the two countries that when the Hondurans finished their work in that zone, the mixed commission should meet again at La Unión to discuss the territorial rights of the two republics at the examined places and to continue their work on the whole line. Owing to the broken leg of one of the Salvadorian engineers in August 1916, the meeting could not be held within three months or before the second term of ten years, for the 1895 convention ran out on September 24, 1916.[21] To a renewal by Honduras on August 18 of the suggestion for an extension of the 1895 convention, Salvador replied on August 21 that she thought an extension unnecessary, since the mixed commission had finished its studies of the frontier line between the departments of Morazán and La Paz and there only remained to discuss the territorial rights of the two republics in relation to that line; and if the mixed commission could not reach an agreement, the matter could not be settled by any other tribunal than the Central American Court of Justice, established by the Washington convention of December 20, 1907, because according to Article 1 of the General Convention of Peace and Friendship signed at the same place and date, the Court was called upon to settle every disagreement or difficulty, or whatever nature, between the Central American states; consequently, Salvador saw no plausible reason for extending the boundary treaty, so much the more because experience had demonstrated that due to previous postponements of the same nature, there had not been brought any nearer a definite solution of a matter of so great importance for the fraternal relations between the two republics. Honduras answered on September 25, 1916, the boundary treaty having expired the day before, that in her opinion special boundary treaties which established technical commissions to study the frontier lines and the submitted documents, with a provision for arbitration in case of disagreement, were the most suitable means of solving such questions, sanctioned by the practice of various American nations. Moreover, the present disagreement between Honduras and Salvador over territorial rights was not confined to the Nahuaterique zone, between the towns of Santa Elena and Arambala, to which the recent study of the commissions of both coun-

[21] *Mem. del Sec. de Rels. Ext. 1915–16* (Tegucigalpa), vi; Anexo Num. 2, 69–88.

tries had been limited, but extended to various points on the frontier line; and consequently the decision of the dispute in the Nahuaterique zone, not embracing the whole extent of the boundary question, would leave pending the other cases of divergence which might occur, and would necessitate submitting each one of them, as a separate action, to the Central American Court of Justice. On September 30, 1916,[22] Honduras notified Salvador that she would not join in the demand by Salvador against Nicaragua in the Central American Court of Justice, but that she considered her 1900 boundary (by the mixed commission) with Nicaragua[23] in the Gulf of Fonseca effective and valid, and recognized no codomination or cosovereignty with Salvador or any other republic in the waters of Fonseca; and Salvador replied on October 7, 1916, reasserting her rights of codomination in the waters of the Gulf.

Negotiations for a new agreement made slow progress but there was finally signed at Tegucigalpa on April 5, 1918,[24] a boundary convention which provided:

Art. 1. The Governments of Honduras and Salvador shall name commissioners who, with the proper authority, shall organize a Mixed Boundary Commission charged with resolving in an amicable manner the pending doubts and difficulties as to the common land frontier, and with marking on the ground the dividing line which indicates the frontier boundary of the two Republics.

Art. 2. The Mixed Commission, composed of an equal number of members for both parties, shall meet in one of the frontier settlements which offers best conveniences for the work and shall there begin its labors. To that end there shall be considered as boundaries between Honduras and Salvador the lines on which both Republics shall be in accord or which neither of the two disputes, observing for the rest which may be the subject of doubts or differences the following rules:

1st. It shall be understood that the boundaries of each of the two Republics are those which at the date of independence separated the Provinces of Honduras and Salvador.

2nd. The boundaries between Honduras and Salvador shall also be the lines indicated in public documents not contradicted by documents of an equal nature and of equal or greater force.

3rd. The Mixed Commission, to fix the boundaries, shall consider the fully proved ownership of the territory. To possession shall be given that value which is just, legitimate and based on the general principles of Law and the rules of justice which the Law of Nations has sanctioned in that regard.

4th. In the absence of proof of ownership, they shall consult the maps of both Republics and geographic or any other sort of documents, public or private, which may throw any light; and the boundaries between the two Republics shall be those which in view of such study the Mixed Commission shall equitably fix.

[22] *U. S. For. Rel.*, 1916, p. 890.

[23] See Sec. 8, this chap., *supra*.

[24] Signed for Honduras by Silverios Laínez; for Salvador by Atilio Peccorini. Ratified by Honduras (Cong. Nac. Decr. 94), April 15, 1918. Not ratified by Salvador. *La Gaceta* (Tegucigalpa, July 3, 1918), XLIII, 697.

5th. The Mixed Commission, on making the demarcation, may make compensations or fix such indemnizations as it believes just and proper, in order so far as possible to establish well marked natural bounds, in the zones which may be disputed.

6th. In its study of the plans, maps and other similar documents submitted by both Governments, the Mixed Commission shall give preference to those which it considers more rational and just.

7th. In case the Mixed Commission cannot agree amicably on any point, it shall set it forth separately in two special books, signing a double detailed minute, with recital of the allegations of both parties and shall continue its study of the other points of the demarcation line, omitting the indicated point, until it has fixed the last dividing point at the end of the said line.

8th. The books referred to in the preceding clause shall be sent by the Mixed Commission one to each Government, for keeping in its national archives.

Art. 3. The points or lines on which the said Mixed Commission shall have been in entire accord shall constitute the unquestionable demarcation of the common frontier as to those points or lines. Such other points or those other lines which the said Commission shall not have been able to settle shall be submitted, at the latest one month after the sessions of the said Commission shall have been concluded, to an arbitral decision, against which there shall be no appeal. For this purpose the King of Spain is designated arbitrator, and in his default any one of the Presidents of Latin America on whom the Chancelleries of both countries may agree. But if before the matter shall be submitted to any such arbitrator, the Central American Court of Justice shall be established, with identical organization to that which it has had, the controverted point or points shall be submitted to that Tribunal as arbitrator. The arbitrator shall proceed as indicated in the following article, without any other procedure.

Art. 4. [The steps and periods for the arbitration.]

Art. 5. The arbitral decision, whatever it may be, shall be considered a perfect, obligatory and perpetual treaty between the High Contracting Parties, and shall not permit of any appeal; the dividing line between the two Republics, consequently, to be traced and marked, at the disputed point or points, in accordance with such arbitral decision.

Art. 10. The present treaty shall have a duration of 10 years, even in case of its execution being interrupted, within which period it cannot be revised nor modified, in any manner, nor can the question of boundaries be settled by any other means.

Art. 11. For the purposes of the duration of this treaty, the 10 years shall be counted from the day of the exchange of ratifications, and it shall continue to be binding on both Republics until one year after one of the Contracting Parties notifies the other of its intention to end it.

It will be observed that this treaty differs from that of January 18, 1895, substantially only in limiting the work of the mixed commission to the land frontier, naming the king of Spain, a Latin American president or the Central American Court of Justice as arbitrator, and as to the continuance of the treaty. The treaty was promptly approved by the Honduran National Congress with some modifications, included above, but was apparently never even submitted to the National

Legislative Assembly of Salvador. In 1922 a dispute arose between local municipal authorities as to jurisdiction over a strip of land on the banks of the river Lempa, between Ocotepeque, Honduras and Citalá, Salvador. Notes were exchanged between the Foreign Office secretaries, but nothing was settled and no progress made.

The islands in the Gulf of Fonseca, at about 13°12′ N latitude and 87°36′ W longitude, where the boundary between Honduras and Salvador runs twenty-three miles from the mouth of the river Goascorán southward through the Gulf to beyond Tigre Island, and thence southwestward out into the Pacific Ocean, have also been a source of dispute and negotiation. Honduras has generally maintained that all of the islands were part of the old province of Honduras in Spanish colonial days, and relied on the *uti possidetis* of 1821, while Salvador has alleged a universal rule that islands should go with the shore to which they were nearest and supported such division in this case. President Joaquín San Martín of Honduras is said to have made with Salvador in 1833 a convention as to the boundary in the Gulf of Fonseca which was never approved by the Honduran Assembly and cannot now be found. In 1833 Honduras occupied the islands of El Tigre and Sacate Grande, Salvador asserts provisionally only and with her express permission, in order that Honduras might disarm and concentrate the dissatisfied political fugitives taking refuge there from San Miguel. On October 17, 1833, Honduras established a port, now Amapala, on Tigre Island, garrisoning it with a comandante and eleven soldiers; it was made a port of deposit on February 5, 1844, and a free port on April 19, 1847. The temporary cession in 1849 of Tigre and other islands by Honduras to the United States and the brief occupation by the British against both Honduras and Salvador have already been mentioned.[25] About 1854 Honduras declared that the waters of the river Goascorán continued to be the boundary line, even after they entered the gulf; but Salvador rejected the idea as unheard of in law and impracticable in fact. The present actual possession, or unratified *status quo*, seems to assign to Honduras the islands of Esposición, Garrobo, Gueguensi, Sacate Grande, Tigre, and Violin; and to Salvador the islands of Blanca, Chuchito, Conchaguilla or Conchaguita, Conejo, Coyote, Icla, Martín Pérez (native, Nacaome), Mianguera, Mianguerita, Perico, and Punta de Sacate. The entire boundary is one hundred and ninety-six miles long.

This boundary has for over a century been a fruitful source of contention between the neighboring republics, whose governments have been nearly as often at loggerheads as at peace with each other. The two states made their first agree-

[25] See Sec. 4, this chap., *supra*.

ment relating expressly to the frontier sixty years ago, in an arrangement for arbitration as to three short sections, but the specified time ran out before any submission; an agreement fifteen years later as to the entire line expired after twenty years of practical inaction, and a new agreement has been lacking ratification now for over a score of years. Clashes of local authorities, but more especially bands of invading revolutionists, may be expected to continue to stir up trouble on this border from time to time; and it can hardly be predicted whether final adjustment by arbitration will come only after serious threats of further armed conflict or by peaceful agreement between two governments strong enough to win home approval of their plan and permanent enough to carry it out.

10. Mexico–Great Britain

(*See map, p. 121, supra*)

Very early in the independence of Mexico, Great Britain desired to cultivate friendly trade relations, and the two nations signed at Mexico City on April 6, 1825,[1] a treaty of friendship, commerce, and navigation which provided:

> Art. 15. The stipulations agreed to by the sixth article of the Treaty of Versailles of Sept. 3, 1783, shall remain in full force and vigor between His Britannic Majesty and the United States of Mexico, with respect to that portion of the Mexican territory which they embrace, as shall also those of the Convention signed in London on July 14, 1786, for explaining, enlarging and rendering effective the stipulations of the above mentioned article.

The treaties [2] referred to were those between Great Britain and Spain, revived by the Treaty of Madrid of July 5, 1814, and confirmed the limits of the British settlement, primarily of woodcutters, at Belize. This treaty with Mexico was not ratified by Great Britain because it did not contain certain rules of maritime law which England thought essential, and because in a secret article Mexico reserved a right of preferential treatment towards Spain. The two nations signed at London on December 26, 1826,[3] and both duly ratified a treaty of friendship, commerce and navigation which provided:

> Art. 14. The subjects of His Britannic Majesty shall, on no account or pretext whatsoever, be disturbed or molested in the peaceable possession and exercise of whatever rights, privileges and immunities they have at any time enjoyed within the limits described and laid down in a Convention, signed between His said Majesty and the King of Spain on July 14, 1786; whether such rights, privileges and immunities shall be derived from the stipulations of

[1] *Trats. y Convs. Celebrados y no Ratificados por la Rep. Mexicana* (Mexico, 1878), 307.

[2] See Sec. 7, this chap., *supra*.

[3] Ratified by Great Britain, July 16, 1827; ratified by Mexico, April 3, 1827; ratifications exchanged at London, July 19, 1827. *Trats. y Convs. Concluidos y Ratificados por la Rep. Mexicana* (Mexico, 1878), 427. 14 *British and Foreign State Papers* 614.

the said Convention or from any other Concession which may, at any time, have been made by the King of Spain or his predecessors to British subjects and settlers residing and following their lawful occupations within the limits aforesaid; the Two Contracting Parties reserving, however, for some more fitting opportunity, the further arrangements on this Article.

England thus apparently continued to recognize the validity of the treaties of 1783 and 1786. On March 12, 1849, the Mexican foreign minister complained to British Secretary of Legation Percy William Doyle in Mexico City that the republic was unable to put down the savage war in Yucatan while the Indians received aid from the British establishment of Belize; and Doyle on August 28, 1849, answered that Lord Palmerston had instructed him to say that although the treaty of 1786 was referred to in Article 14 of the treaty of December 26, 1826, it only provided that British subjects should not be disturbed in the exercise of the rights which the treaty of 1786 gave them, and added that

there does not exist any conventional stipulation whatever by which Mexico may demand of Great Britain fulfillment of the obligations previously contracted by the latter with Spain, with respect to the establishment of Honduras.

Mexico insisted on the continued validity of the treaties of 1783 and 1786, and after further representations in London, the dispute lapsed. In May 1854, as a consequence of frequent conflicts over various places occupied by British subjects, such as San Pedro or Ambergris key and others, Mexico instructed her minister in London to open negotiations for a settlement of the boundaries of Belize and for indemnities for land usurpations committed by British subjects. Lord Clarendon answered on July 4, 1854, that, as to the boundary settlement,

as Article 14 of the Treaty between Great Britain and Mexico of Dec. 26, 1826 had adopted the boundary indicated by the treaty between Great Britain and Spain of July 14, 1786,

there was no need of fixing that boundary again by a new diplomatic negotiation; and as to the usurpation of lands outside that boundary by British subjects,

Her Majesty's Government did not desire to support British subjects in their advances to usurp lands beyond the extent which they now occupy, nor to favor or protect them in any transgression of Mexican laws in Mexican territory; but Her Majesty's Government scarcely believed that to disturb the British subjects established in Mexican territory would result in any benefit to the interests of Mexico, since the capital and labor which they employed in their commercial operations necessarily were of advantage to Mexico.

Further boundary negotiations in London in 1857 also came to nothing.

Emperor Maximilian's deputy governor of the peninsula of Yucatan [4] in a

[4] See Sec. 5, this chap., *supra*.

decree of September 19, 1864,[5] described his territory as bounded with the republic of Guatemala as far south as the river Sarstún, and

> Art. 1, subd. 1. . . . down the course of that river to its mouth in the Gulf of Honduras.
>
> Subd. 2. At the proper distance from land at the mouth of the river Sarstún, turning, away from land also, along the shore of the peninsula, to end at the bar of San Pedro y San Pablo, the corresponding islands, etc., along the whole course of said shore remaining under the dominion of the [Mexican] Empire.
>
> Subd. 3. The small part in which some English have permission to cut wood, toward the east of the peninsula and near Belize or Wallix, is the same given by the treaties made with Spain and Mexico by His Britannic Majesty.

On August 30, 1866, the British minister to the Mexican Empire complained that on April 27 of that year about one hundred and twenty-five armed Chichanchá Indians under their chief Canul had invaded British territory and attacked a party of woodcutters at Qualon Hill; to which Maximilian's foreign secretary replied on September 29 that the Mexican government had given no military appointment or title to and maintained no relations with Canul, who operated on his own and was one of the chiefs who had made war on the peninsula of Yucatan with arms, powder, and ammunition obtained from the settlement at Belize. As diplomatic relations between Great Britain and Mexico had been broken off since 1867, on December 2, 1872,[6] Lord Granville, British foreign secretary, wrote directly to the Mexican minister of foreign affairs complaining that on September 1, 1872, a force of from one hundred and fifty to two hundred Icaiché Indians led by Marcos Canul attacked the town of Orange Walk and were repulsed and fled back across the Mexican frontier only after a stiff fight by the garrison, police, and residents, with a loss of five killed, about forty wounded, and fifteen buildings burnt to the ground; that there had been a similar attack in 1870; and demanded compensation and prevention of future invasions of British territory. Mexican Foreign Minister José María Lafragua answered on February 12, 1873, denying any responsibility by Mexico for the acts of the barbarians who were making war in Yucatan, supplied by the traders of Belize. Lord Derby replied on July 28, 1874, and in a note of March 23, 1878, Foreign Minister Ignacio Luis Vallarta reviewed at length, with nineteen documentary exhibits, the history of the controversy, and declared that Mexico was not responsible for the events at Orange Walk on September 1, 1872; that Great Britain was responsible to Mexico for damages caused by the war with the Indians in Yucatan from 1847 to date; that Mexico did not recognize any rights of Great Britain in Belize except those given

[5] *Col. de Leyes . . . del Estado de Yucatan* (Mérida, 1884), III, 98.

[6] *Correspondencia Diplomática cambiada entre el Gob. de la Rep. y el de S. M. B. con relación al Territorio llamado Belice, 1872–1878* (Mexico, 1878). 58 *British and Foreign State Papers* 682–708.

by the treaties of September 3, 1783, and July 14, 1786, revived by that of December 26, 1826; and requested that Great Britain take adequate means to put an end to the relations which the English in Belize maintained with the Indians of Yucatan, whether by making treaties with them, purchasing parts of the national territory from them, selling them munitions of war, or lending them physical and moral aid for their depredations.

Great Britain and Mexico signed at Mexico City on August 6, 1884,[7] a preliminary agreement for the renewal of diplomatic relations (after a breach of seventeen years), agreeing to examine impartially and to pay pecuniary claims by the citizens of each nation against the other; and the boundary question was not long in coming up again. In April 1887 the British government notified Mexico that Indian chiefs of Santa Cruz and Tulum had expressed their desire to place themselves under the protection of Great Britain and to annex the territory they occupied to British Honduras, but that Acting Governor Henry Fowler had been instructed to inform them that their offer could not be accepted and to advise them and other Indians in revolt to come to an arrangement with Mexico. This led to consideration of the whole Belize question, and on May 12, 1889, the British minister submitted a project as a base for oral discussion. Modifications were agreed on, but the negotiations were suspended for four years, while Mexico was engaged in pacifying the Indians. On September 28, 1892, the Legislature of Yucatan addressed a request to the national government to put an end to doubts and difficulties with the Belize colony by negotiating a definite boundary treaty with Great Britain; and President Porfirio Díaz let it be known that he was renewing the negotiations which had been conducted secretly in 1888–89, but lately suspended. The two nations concluded at Mexico City on July 8, 1893,[8] a boundary treaty which provided:

> Considering that on April 30, 1859 a Treaty was concluded between Her Britannic Majesty and the Republic of Guatemala [Article 1 quoted];
>
> That on Sept. 27, 1882 the Mexican Republic negotiated a Boundary Treaty with Guatemala and, on fixing the dividing line between the two countries in the Yucatan Peninsula, they determined as such the parallel of 17°49′ north, which should run indefinitely towards the east;
>
> That it is of manifest advantage . . . to define with all clearness what is the Mexican frontier to which Guatemala referred in the Treaty concerning its limits with the British possessions in the Bay of Honduras, and what are in consequence the boundaries of those possessions with Mexico. . . .

[7] 75 *British and Foreign State Papers* 908. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XII (1887), 778.

[8] Signed by Ignacio Mariscal, Mexican Foreign Minister and Sir Spenser St. John, British Minister to Mexico. Ratified by Mexico, April 25, 1897; ratified by Great Britain, May 6, 1897; ratifications exchanged at Mexico City, July 21, 1897. *Trats. y Convs. Vigentes* (Mexico, 1904), 265; (1909), I, 448; (1930), I, 289. 85 *British and Foreign State Papers* 58. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXV (1900), 331.

Art. 1. It is agreed between Her Britannic Majesty and the Republic of Mexico that the boundary between the Republic and the Colony of British Honduras was and is as follows: Beginning at Boca Bacalar Chica, the strait which separates the State of Yucatan from Ambergris Cay and its dependent isles, the boundary line runs in the center of the channel between the above mentioned cay and the mainland [southwestward to parallel 18°09′ N; then northwest midway between two cays to parallel 18°10′ N; then turning westward, across the adjoining bay westward to meridian 88°02′ W, then north to parallel 18°25′ N, again westward to meridian 88°18′ W, northward along that meridian to latitude 18°28.5′ N, in which is situated the mouth of the river Hondo, which it follows in its deepest channel, passing west of Albion island] continuing up Blue creek until said creek crosses the meridian of Garbutt's Falls at a point due north of the point where the boundary lines of Mexico, Guatemala and British Honduras intersect; and from that point it runs due south to latitude 17°49′ N, the boundary line between the Republics of Mexico and Guatemala, leaving to the north, in Mexican territory, the so-called river Snosha or Xnohha.

Art. 2. [Both nations, in order to facilitate the pacification of the Indian tribes living near the frontiers and to prevent any future insurrections among them, agree to prohibit in an efficacious manner their citizens and the inhabitants of their respective dominions from furnishing arms or ammunition to these Indian tribes.]

Art. 3. [Both nations agree to use every effort to prevent the Indians living in their respective territories from making incursions into the possessions of the other, but neither can hold itself responsible for the acts of those Indian tribes in open rebellion against their authority.]

When the terms of the treaty became known, Mexican patriot politicians set up a clamor against it, because (*a*) Belize belonged to Mexico, (*b*) it ceded to the English not only the lands they were occupying in Belize but a greater extent, and (*c*) it ceded the only possible communication which Mexico had by water with Bacalar. Despite a full report by Secretary Mariscal, petitions by municipal and private bodies, and numerous pamphlets,[9] especially from Yucatan, the Senate of Mexico delayed in giving its approval. The two governments signed at Mexico City on April 7, 1897,[10] a convention which added to the 1893 treaty a new stipulation, providing:

Art. 3, bis. Her Britannic Majesty guarantees to Mexican merchant vessels in perpetuity the absolute liberty, as at present enjoyed, of navigating the Strait opening to the south of the Ambergris Cay, otherwise known as the island of San Pedro, between this cay and the mainland, as well as of navigating the territorial waters of British Honduras.

With the only practical objection which had been urged against the treaty thus removed, recognition of the fact that whatever unlawful expansion the British

[9] *Informe rendido ante el Senado* (Mexico, 1893). *Yucatan y Belice, Col. de Docs. Importantes* (Mérida, 1894). *Defensa del Trat. de Límites entre Yucatan y Belice* (Mexico, 1894). Nestor Rubio Alpuche; *Belice, Apuntes Historicos* (Mérida, 1894). Alejandro Villaseñor, *La Cuestión de Belice* (Mexico, 1894). José María Gamboa, "Mexico y Belice," *Rev. de Leg. y Jur.* (Mexico, 1894), VI, 58. Miguel Castellanos Sánchez, *La Cuestión de Belice* (Mexico, 1897).

[10] Signed by Ignacio Mariscal, Mexican Foreign Minister and Sir Henry Nevill Dering, British Minister to Mexico. Ratified with Treaty; Note 8, *supra*. *Trats. y Convs. Vigentes* (Mexico, 1930), I, 290. 89 *British and Foreign State Papers* 53.

had been guilty of, from the river Belize south to the river Sarstún, had injured Guatemala and not Mexico, and perhaps some additional pressure from the administration, the Mexican Senate approved the treaty and additional article on April 19, 1897. Four months after ratifications of the treaty had been exchanged, David Wilson, governor of British Honduras, on November 25, 1897,[11] issued a proclamation prohibiting the export of arms, ammunition, and gunpowder by land or sea from that colony altogether into the republic of Mexico, and to anywhere else without a license.

This boundary, though only about 105 miles long on land, through a sparsely settled region, and 50 by water, across the Bay of Chetumal, caused hard feeling out of all proportion to its importance before it was finally adjusted, for the total length of 155 miles. After thirty-five years of friction, Great Britain failed to settle the question at the time of her general arrangement of the Mosquito Coast difficulties, in 1859–60, being then on the verge of hostilities rather than amicable agreements with Mexico; and to a break in diplomatic relations for seventeen years, there succeeded thirteen years of complaints and recriminations, which no unusual British tact helped to alleviate, until in 1897 the two nations found they could agree directly on a common line. There have been no incidents or disputes for over two score years now and it seems safe to consider this boundary as definitely and permanently settled.

11. Nicaragua–Colombia

(*See map in back pocket*)

Colombia for a century maintained that the royal cédula of March 2, 1537, by which Charles I fixed Cape Gracias á Dios as the northern limit of the province of Veragua, including the old realm of Tierra Firme, and the royal cédula of August 20, 1739, by which Philip V created the viceroyalty of New Granada and assigned to it the four provinces of Panama, Puerto Belo, Veraguas, and Darién, gave her a right to the Mosquito Coast from Cape Gracias á Dios southward to Panama, with an indeterminate and indeterminable inner or western boundary, and to the Archipelago of San Andrés; and left to the captaincy-general of Guatemala jurisdiction over only that part of the Mosquito Coast from Cape Gracias á Dios westward toward Trujillo. Charles IV, probably because of friction between jealous local governors, by royal order of November 30, 1803, resolved that

> the islands of San Andrés and the part of the Mosquito Coast from Cape Gracias á Dios, inclusive, to the river Chagres, are detached from the Captaincy-General of Guatemala and made dependent on the Viceroyalty of Santa Fé;

[11] 90 *British and Foreign State Papers* 1256.

but both Costa Rica and Nicaragua declared that this was a military administrative measure only and not a transfer of jurisdiction. Captain John Bligh on H.M.S. *Surveillante* arrived at San Andrés island on March 26, 1806,[1] and took it from the Spanish governor, Thomas O'Neille. The British inhabitants, fearing to be left unprotected and subject to recapture by the Spaniards, on April 4, 1806, asked Bligh both to leave a force on the island when he sailed away and to request the Admiral to provide them safe convoy to Jamaica, the Grand Cayman, or the Mosquito shore. The English abandoned the island soon after, and Governor O'Neille returned. Captain Luis de Aury, who had been insurgent governor at Galveston, Texas, under Mexico in July 1817 and governor of Amelia Island, Florida, following M'Gregor, from September to December 1817, when he yielded the island to United States troops, established a company of raiders on San Andrés in 1818 and exercised power there for three years, until Colombia took possession in 1822. On July 5, 1824,[2] General Francisco de Paula Santander, vice-president of Colombia with executive power, issued a decree reciting that it had come to the knowledge of the government that various individuals residing in foreign countries (chiefly the project of Gregor M'Gregor, who was at Amelia Island in 1817), had formed plans for founding establishments in a certain territory denominated Poyais, situated on the Mosquito shore, and providing:

> Art. 1. Every attempt is declared illegal, which may be directed to colonize any portion of that part of the Mosquito shore, from Cape Gracias á Dios, inclusive, to the river Chagres, which belongs by dominion and possession to the Republic of Colombia, in virtue of the formal declaration made at San Lorenzo on Nov. 30, 1803.

The government of New Granada on September 21, 1826,[3] and January 14, 1833,[4] issued decrees establishing regulations for ships trading with the Mosquito Coast as far as the Escudo de Veragua; and on May 3, 1838,[5] a decree forbidding the illegal occupation by any person or association of any part of the territory of the republic, having western limits as indicated in the royal order from San Lorenzo of November 30, 1803. Soon after the dissolution in 1838 of the United Provinces of Central America it was rumored that the king of the Netherlands was supporting a plan for an interoceanic canal from Lake Nicaragua to the mouth of the San Juan River,[6] and on January 7, 1839, General Pedro A. Herrán, foreign minister of New Granada, wrote the foreign minister of the Republic of Central America that,

> if the proposed intermarine communication is attempted to be carried out, the Government of New Granada will oppose it, using for the purpose all means international law permits.

[1] 38 *British and Foreign State Papers* 683.
[2] 11 *British and Foreign State Papers* 816; 12 *ibid.* 819. *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), V, 617.
[3] Martens, *Nouv. Rec. Gén. de Traités*, VII (1829), I, 76.
[4] 22 *British and Foreign State Papers* 494.
[5] 38 *British and Foreign State Papers* 663. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 168.
[6] 38 *British and Foreign State Papers* 645.

On August 1, 1852, the political head of the Canton of San Andrés (State of Bolívar, Colombia)[7] protested to the British consul at Bluefields because in the name of the king of the Mosquito Indians he had granted a lease of the smaller Mangles Island, and

had established on it and on the larger island of the same name tariffs of importation and exportation for vessels, and had demanded taxes from the New Granadan citizens who made up the population of the Mangles islands.

The republics of New Granada and Costa Rica signed at San José on June 11, 1856,[8] a treaty of friendship, commerce, navigation, and boundaries, not ratified by Costa Rica, which provided:

Art. 41. . . . the islands of Providencia, Santa Catalina, San Andrés, Albuquerque, Mangle Grande, Mangle Chico and the others which belong to the District known as the Canton of San Andrés, [which] shall continue to belong to New Granada.

The United States of Colombia and the Republic of Costa Rica signed at Bogotá on March 30, 1865, a treaty of friendship, commerce, navigation, and boundaries, not ratified by Colombia, which provided:

Art. 2. . . . Escudo de Veraguas island and Providencia, Santa Catalina, San Andrés, Alburquerque, Mangle Grande, Mangle Chico and other islands belonging to the former Province of Cartagena, as the Canton of San Andrés, [which] shall continue to belong to Colombia.

On July 28, 1880, Luis Carlos Rico, Colombian foreign minister, in a circular note to the governments of Guatemala, Honduras, Salvador, and Nicaragua set forth that Congress as well as the executive desired that the boundaries of Colombia and those republics should be settled diplomatically or by an arbitral decision. In 1890 in a series of notes Antonio Roldán, Colombian foreign minister, renewed the former protests to the government of Nicaragua at the concession to open an interoceanic canal [9] granted by Nicaragua over lands which might belong to the Colombian Mosquito Coast and at the occupation in May 1890 of the Mangles Islands by Nicaraguan authorities. On May 23, 1894, Marco Fidél Suárez and on February 8, 1896, José M. Uricoechea, Colombian foreign ministers, respectively, protested again to the government of Nicaragua at the acts of dominion and jurisdiction which that government assumed to exercise on the Mosquito Coast. Nicaragua's replies to the successive notes, on September 16, 1880, June 26, 1890, and March 14, 1896, were limited to denying any right of Colombia

[7] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 268.

[8] See Sec. 2, this chap., *supra*.

[9] See Sec. 13, this chap., *infra*.

in the Mosquito Coast, and said nothing about the Mangles Islands. In the boundary dispute between Costa Rica and Colombia, President Emile Loubet of France handed down his arbitral award on September 11, 1900,[10] which adjudged that:

> As to the islands, groups of islands, islets and banks situated in the Atlantic Ocean near the coast, east and southeast of Mona Point, those islands, whatever their number and extension, shall form part of the Colombian jurisdiction, and those which are west and northwest of said Point shall belong to the Republic of Costa Rica.
>
> As to the islands more distant from the Continent and included between the Mosquito Coast and the Isthmus of Panamá, especially Mangle Chico, Mangle Grande, Alburquerque Cays, San Andrés, Santa Catalina, Providencia, Escudo de Veragua and any other islands, islets and banks which formerly belonged to the ancient Province of Cartagena, under the designation of the Canton of San Andrés, it is understood that the territory of such islands, without any exception, belongs to the United States of Colombia.

Nicaragua maintained that this decision was of no effect as to her, since she was not a party to the arbitration.

On July 19, 1902,[11] President José Santos Zelaya of Nicaragua complained to the United States that Colombia was preventing transit across the Isthmus of arms purchased by Nicaragua in New York; and Alvey A. Adee, acting secretary of state, replied that until United States citizens or vessels were interfered with, the United States could not intervene under the 1846 treaty.

On February 8, 1913, Nicaragua made with the United States a secret convention [12] concerning the construction of an interoceanic canal by way of the river San Juan and Lake Nicaragua, which provided:

> Art. 2. To facilitate the protection of the Panama canal, as well as the rights mentioned in the present Convention, and in order that the Government of the United States may dictate any special measure whatever to that of Nicaragua in order to safeguard the aforesaid interests, the Government of Nicaragua leases for 99 years to the Government of the United States the islands in the Caribbean sea called Great Corn Island and Little Corn Island, and further agrees that the American Government may establish and maintain a naval base in the Gulf of Fonseca. At the expiration of the lease, the Government of the United States shall have the right to renew the present Convention.

This was expanded in the Bryan-Chamorro Convention signed at Washington August 5, 1914, to provide in part:

> Art. 2. To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary

[10] See Sec. 2, this chap., *supra*.

[11] *U. S. For. Rel.*, 1902, pp. 884–889.

[12] See Sec. 13, this chap., *infra*.

to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of ninety-nine years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of ninety-nine years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

Colombia learned the terms of the earlier convention, and on August 9, 1913, protested to Nicaragua against the provisions of Article 2, and renewed her former protests at the improper occupation which she said Nicaragua had been making, of late years, of Colombian territory. Colombia also instructed her minister in Washington, at an opportune time, to make known to the government of the United States that, as regards the Mangles Islands, the agreement signed with Nicaragua could not be carried into effect, since they belonged to Colombia;[13] but this comparatively small new offense was swallowed up in the Colombian anger over the loss of Panama, negotiations for a treaty of recompense for which were about to mature with the United States.[14] Nicaragua replied to Colombia in a long note of December 24, 1913, which for the first time officially affirmed that Nicaragua had right of sovereignty over the Mangles Islands. Diplomatic correspondence without material change of position continued between the two nations until Colombia resumed cordial relations with the United States with the exchange of ratifications on March 1, 1922, of the treaty of April 6, 1914, as modified. Colombia thereupon instructed her minister in Managua to open negotiations for a direct agreement with Nicaragua upon the questions in dispute between the two nations. Nicaragua in September 1924 sent Dr. Manuel Pasos Arana as minister on special mission to Bogotá, and in October 1924 he presented a draft of a boundary treaty, which proposed to submit the land and island claims of each country to demarcation by a mixed commission, with arbitration for points on which they could not agree. Colombia rejected this proposal, on the ground that her dominion over the islands was not arbitrable, but the negotiations continued. Dr. Manuel Esguerra, Colombian minister to Nicaragua and Dr. José Bárcenas Meneses, Nicaraguan sub-secretary of foreign affairs,

[13] *Informe del Min. de Rels. Ext. al Cong. de 1915* (Bogotá, 1915), 87; Anexos 165, 176.

[14] See Sec. 15A, this chap., *infra*.

signed at Managua on March 24, 1928,[15] a treaty on territorial questions [16] which provided:

Art. 1. The Republic of Colombia recognizes the sovereignty and full dominion of the Republic of Nicaragua over the Mosquito Coast between Cape Gracias á Dios and the river San Juan, and over the islands Mangle Grande and Mangle Chico in the Atlantic Ocean (Great Corn Island and Little Corn Island); and the Republic of Nicaragua recognizes the sovereignty and full dominion of the Republic of Colombia over the islands of San Andrés, Providencia, Santa Catalina and all the other islands, islets and cays which form part of the said Archipelago of San Andrés. There shall not be considered included in this Treaty Roncádor, Quitasueño and Serrana cays, the ownership of which is in dispute between Colombia and the United States of America.

On the exchange of ratifications, the representatives of both nations in accordance with their instructions agreed, on the proposal of Nicaragua, that,

the Archipelago of San Andrés y Providencia mentioned in the first clause of said Treaty does not extend west of meridian 82° from Greenwich.

In the debate on the treaty in the Colombian Senate, to soften the cession of any territory, it was openly stated that Colombia's sovereignty on the Mosquito Coast as well as over the Mangles Islands, during both the colonial regime and the time of the Republic, had been for the greater part nominal and on paper, limited to decrees concerning the territory and protests at foreign occupation, and that arbitral decisions of boundary questions in the last forty years tended to establish the rule that actual effective occupation of long duration should prevail over legal title.[17]

By this agreement, now ten years old, Colombia's shadowy claim to the whole of Nicaragua's east coast and some adjacent islands was quieted and Colombia's title to the San Andrés Archipelago was confirmed; and since the two nations have no common boundary or other likely remaining source of dispute or contention, it may be expected that the settlement will be permanent between them.

[15] Ratified by Colombia (Law 93), Nov. 17, 1928; ratified by Nicaragua, April 4, 1930; ratifications exchanged at Managua, May 5, 1930. *League of Nations Treaty Series*, No. 2426, CV, 338. *Cf.* also *ibid.*, CXXII, 362. 129 *British and Foreign State Papers* 277. *Amer. J. Int. Law*, XXIII (1929), 155; XXV (1931), 328. *Survey of Int. Affairs, 1930* (London, 1931), 440.

[16] As to Roncádor and Quitasueño, see Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 266. For Serrana, see Chap. II, Sec. 13, *infra*.

[17] Antonio José Uribe, *Colombia, Las Cuestiones de Límites* (Bogotá, 1931), 351–458, 618–619.

12. Nicaragua–Great Britain

(See map in back pocket)

The Mosquito Coast, or Reserve, accurately was a strip of land about 225 miles long and 40 miles wide along the eastern coast of Nicaragua, on the Caribbean, from Karata, at the mouth of the Wawa River, at 13°50′ N latitude and 83°40′ W longitude to Bluefields, near the mouth of the Rama River at about 12°10′ N latitude and 83°45′ W longitude; but the name was often more loosely used to designate the entire eastern seacoast of Nicaragua, inland to the highlands, and even the northeast coast of Honduras as far west toward Trujillo and Cape Honduras as the Aguán or Negro River; in all, some five hundred miles of coast. Cape Gracias á Dios was discovered by Columbus in 1502 on his fourth voyage, and the region took its name from the Mosco or Missquito Indians living there, corrupted later to a more familiar form by Spanish or perhaps by English settlers. The first white settlement was made in 1631 on two small cays by representatives of the British Company of Adventurers for the Island of Providence.[1] The English woodcutters' and trading posts grew and spread, and from the first the British secretly or openly aided the Indians in their resistance to subjugation by the Spaniards. Some time after the conquest of Jamaica by the expedition sent out by Oliver Cromwell in 1655,[2] the Mosquito king, with the concurrence of his chiefs and people, placed themselves under the protection of Charles II, and the governor of Jamaica accepted the union and promised them royal protection. Thereafter many Jamaicans went to the Mosquito Coast to trade and to settle. On November 30, 1711,[3] Fray Benito Garret y Arlovi, bishop of Nicaragua, sent from Granada de Nicaragua to Philip V an urgent request, with a detailed report of needed armament, supplies, costs, proposed procedure and operations, for an expedition to exterminate totally the Mosquito Indians, inhabiting some sixty leagues along the coast from the mouth of the river San Juan to the city of Trujillo in the province of Honduras, and to wipe out the three principal towns of Puntagorda, San Cristóbal, and Panamacá, for the glory of God; and, besides, the provinces of Nicaragua, Nicoya, and Costa Rica were so rich that if protected they would in less than ten years repay all the costs of such an expedition. On June 25, 1720,[4] Sir Nicholas Lawes, British governor-in-chief of the Island of Jamaica "and all the territories thereon depending in America," signed at Santi-

[1] Chartered, Dec. 4, 1630. Old Providence was Catalina Island. Chairman: Robert Rich, second Earl of Warwick, President of the Council of the New England Company; Treasurer, John Pym, one of the patentees of Connecticut.

[2] See Chap. II, Sec. 15D, *infra*.

[3] Manuel M. de Peralta, *Costa Rica y Costa de Mosquitos* (Paris, 1898), 41.

[4] 38 *British and Foreign State Papers* 703. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 172.

ago de la Vega, Jamaica, a formal agreement with His Majesty Jeremy, king of the Mosquito Indians, for the furnishing of fifty able private men and proper officers to command them, to be brought to Jamaica to "go out in the woods, to pursue and destroy the rebellious negroes lurking in the mountains," for six months at least, forty shillings to be paid to each private, three pounds to the officers and four pounds to the chief captain or general, per month; except for those who seemed inclined to remain and become planters, they were to be sent home to their own country at the end of six months, with rum and flour sufficient for the voyage home and equal shares in all plunder they might take in the pursuit. In 1749 Captain Robert Hodgson, the first British superintendent of the Mosquito Coast, with one hundred men from the troops at Jamaica, took possession of the principal station at the river Negro, erected Fort Dalling, hoisted the royal flag and established a garrison. In 1780 Post Captain Horatio Nelson, aged twenty-two, attempting to win control of the Nicaraguan route for England, led a naval expedition of 1,800 men up the San Juan River, but after severe contests with the Spanish, Indians, and fever, was forced to abandon the effort and returned with 380 men to the coast. Following the treaty of September 3, 1783, Great Britain and Spain discussed their respective claims to the Mosquito Coast from September 1785 until on July 12, 1786, it was announced that the territory was to be delivered up to the Crown of Spain. An English colonel named Robert Hodgson was still in charge on the Mosquito Coast in 1790, with a king named George and an Indian governor called Briton. Spanish royal orders from time to time to the viceroy of Santa Fé or to the commander of the navy at Habana to watch and protect the Mosquito Coast do not seem strictly to have amounted to administrative segregation or annexation. About 1795 the Spaniards had possession of Cape Gracias á Dios and the mouth of the river Negro, but as early as 1800 appear to have abandoned or lost to the Mosquito Indians all the places they had held in that northern part of the coast.

Charles IV by royal order at San Lorenzo on November 30, 1803,[5] detached from the captaincy-general of Guatemala and made dependent on the viceroyalty of Santa Fé (New Granada) that part of the Mosquito Coast from Cape Gracias á Dios, inclusive, to the river Chagres. On March 31, 1808, this was amended by another royal order excluding from the transfer and leaving with Guatemala ten leagues on either side of the river San Juan de Nicaragua to its mouth. On November 14, 1815,[6] thirty-three representatives of the "townships of south-eastern Mosquito shore from the confines of Wanks river to Buckatoro Lagoon, inclu-

[5] See Sec. 11, this chap., *supra*.

[6] 38 *British and Foreign State Papers* 687. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 170.

sive," led by Prince Stephen, King Regent, met at Woollang under British auspices and subscribed "by our appointed proxy William Boggs" an act of consent and submission to the choice of Prince Frederick, eldest son of their late King George, to be king of all the Mosquito shore. On January 14, 1816,[7] Sir George Arthur, superintendent of British Honduras, granted a request by Prince George to be crowned king of Mosquito at Belize, and set January 18, the Queen's birthday, for the ceremony, adding:

> I sincerely trust you will not be disappointed in the advantage you expect to derive by its being understood by your subjects that you are in a particular manner under the protection of the British Government.

In 1823 Gregor M'Gregor (the Scotch adventurer who was at Amelia Island in 1817), then calling himself Prince of Poyas, the northern or Honduran portion of the Mosquito Coast, which he asserted the Mosquito king had granted him, tried to raise money for an expedition to found a settlement there. He published in England a book upon the riches of his kingdom,[8] and is eventually last heard of receiving a pension in Caracas, as a veteran officer of the Wars of Independence.

Colombia in 1825 sent an army colonel, with Lieutenant Colonel Goidet, a Frenchman who afterwards served in Central America, to the Mosquito shore, to persuade the Mosquito Indians to declare themselves dependent on Colombia; but the king told them that the Spaniards had never conquered the country and that the Mosquitos were not subject to Colombia but under English protection, and referred them to the governor of Jamaica. In 1832 [9] Robert Charles Frederick as king of the Mosquito nation purported to exercise authority over Bocas del Toro; and on January 26, 1839,[10] he issued at Cape Gracias á Dios a notice to persons trading at Moín, asserting his right of sovereignty to that port and forbidding the payment of import duties or port charges to the authorities of Cartago (Costa Rica). Costa Rica in a letter of September 29, 1840,[11] declaring that Moín or Salt Creek belonged to her exclusively, appeared to recognize the Mosquito nation. On August 17, 1841,[12] Colonel Alexander Macdonald, superintendent of British Honduras, with King Frederick visited Bocas del Toro on H.M. corvette *Tweed*, under Commander Hugh Donald Cameron Douglas, and notified the New Granadan agent there by note on August 19 that his visit was for the purpose of bringing a message from the Queen of England to her ally, the Mosquito

[7] 38 *British and Foreign State Papers* 679.
[8] M. Rafter, *Memoirs of Gregor M'Gregor* (London, 1820).
[9] 38 *British and Foreign State Papers* 687.
[10] 38 *British and Foreign State Papers* 668.
[11] 38 *British and Foreign State Papers* 681.
[12] 38 *British and Foreign State Papers* 647. *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), V, 587, 610.
Dipl. Corr. of the U. S. (Manning, Washington, 1935), V, 617.

king, and to ascertain the proper limits of the Mosco dominions, and that he hoped,

> as this place [Bocas del Toro] is disputed territory and the greater part of the inhabitants are of English origin or connexion, and first located themselves under the protection of the Mosquito King, that the New Granadian authorities will carefully avoid any act prejudicial to British subjects, which may embroil Granada with Great Britain.

Honduras by a treaty with the Mosquito General Lowrie Robinson on December 16, 1843,[13] seems to have recognized an independent government of Mosquito.

Sir Charles Adam, vice-admiral in command of the British naval forces in North America, the West Indies and seas adjacent, lying off Belize, declared a blockade of the port of San Juan de Nicaragua (Greytown) from June 17 to December 8, 1842, and again from March 30 to October 2, 1844.[14] On January 30, 1847,[15] Viscount Palmerston directed the British representatives in Bluefields, Bogotá, and Guatemala City to send to the Foreign Office all the information they could obtain as to the exact line of boundary claimed by the king of Mosquito as dividing his territory from the state of New Granada and from the states of Central America, with the grounds for each claim, and on June 30, 1847, after examining documents and records, Palmerston instructed the ministers to inform the authorities of the several states of Central America bordering on the kingdom of Mosquito that the king's coast frontier should be maintained as extending from Cape Honduras down to the mouth of the river San Juan, and that

> Her Majesty's Government will not view with indifference any attempt to encroach upon the rights or territory of the King of Mosquito, who is under the protection of the British Crown.

Frederick Chatfield, the British minister in Guatemala City, reported on April 15, 1847,[16] that

> the nautical missions of the Mosquito King have extended to King Buppam's Rock, which, from what I can learn, is situated at the southern extremity of the island Escudo de Veragua, in latitude 8°46′33″ north, longitude 81°27′15″ west.
>
> In my opinion the line of boundary which Her Majesty's Government should insist upon as absolutely essential to the well-being of the Mosquito State, is that tract of sea-board situated between the right bank of the river Román, where several English mahogany works are established (but which are much annoyed and harassed by the undue interference of the Honduras Government), and the left bank of the river St. John; an extent of territory, it is

[13] 38 *British and Foreign State Papers* 683.

[14] 34 *British and Foreign State Papers* 1263, 1264. Martens, *Nouv. Rec. Gén. de Traités*, III (1845), 212.

[15] "Correspondence respecting the Mosquito Territory," *House of Commons*, July 3, 1848 (London, 1848). 38 *British and Foreign State Papers* 641–795.

[16] 38 *British and Foreign State Papers* 642. King Buppan's Bluff or Landing was apparently the English name for Frontón de Guapán.

asserted, that the Mosquito Indians have, ever since the country was known to Europeans, possessed and used without any other people whatsoever interfering with their native right of doing so. . . .

The Government of New Granada, in soliciting Her Majesty's Government to entertain a discussion with it upon the boundary of Mosquito, evidently aims at obtaining the powerful sanction of Great Britain to territorial pretensions of considerable magnitude, embracing an extent of upwards of 80 leagues of sea-board from Cape Gracias á Dios to St. John's river, and involving the suppression of the small State of Costarica along the entire Atlantic coast, with a view to place under the control of New Granada the navigation of the river St. John, and consequently of the Lakes of Nicaragua and the intended ship-canal, so as to render it impossible for any one at any time to undertake the connexion of the 2 oceans by means of the river St. John and the Lake of Nicaragua, without its previous concurrence and co-operation. . . .

Moreover, looking at the probable destinies of these countries, considerable advantages might accrue in after-times by reserving for settlement with Central America or Costarica (the only proper parties), the rights of Mosquito beyond St. John's river, since the line of boundary between New Granada at its province of Ceragua and Costarica, must be held to stop at the river Chiriquí.

On May 22, 1847,[17] Commander Watson on the cutter *Sun* in the port of San Juan was warned to take down the flag of the Mosquito nation, which he was flying, or leave the port, and was told that he would not again be allowed to enter the port bearing the flag of a nation which Nicaragua did not hold to be such. On September 10, 1847, Chatfield notified the governments of Honduras and Nicaragua of the British government's opinion that the rights of the king of Mosquito extended from Cape Honduras to the mouth of the river San Juan; and on October 13 and 14 they answered that they never had recognized and did not then recognize any kingdom of Mosquito, and would use such force as they could to protect their rights. At Nicaragua's request, the Guatemalan government sought to mediate with Chatfield, but he declined to confer with anyone. On October 25, 1847, the Council of State of Mosquito by its senior member of the council, George Hodgson (said to be a native of Bluefields and of Mosquito origin), notified the government of Nicaragua that it had been determined that the king, with the assistance of Her Britannic Majesty's government, should now assert and recover his ancient and hereditary rights against usurpation by Nicaragua on the king's territory, and that on January 1, 1848, he would retake possession of the port of San Juan. On October 26, 1847, H.M.S. *Alarm* under Captain Granville G. Loch, with Patrick Walker, British consul-general at Bluefields, and the king of Mosquito on board, entered San Juan harbor and on the following day required the Nicaraguan flag on the northern bank to be hauled down, ran up the king's flag,

[17] 38 *British and Foreign State Papers* 697. The Mosquito flag was of twelve stripes alternate white and blue, with the union jack across the staff end of the upper six.

fired a royal salute, and stood out to sea again. On January 1, 1848, Walker, as regent, with the king on board a cutter and followed by H.M. steamer *Vixen* under Captain Alfred P. Ryder, entered the harbor of San Juan, landed with marines, sailors, and Bluefields militia, drew up around the flag pole in the plaza, hauled down the Nicaraguan flag, ran up the flag of Mosquito (as also on the *Vixen*), fired a royal salute, and established a tariff for port dues. On behalf of Nicaragua, Patricio Rivas, administrator at San Juan, on January 3, 1848,[18] protested against the occupation of San Juan by British troops,

> under the pretended right which is sought to be alleged in favor of a chief of the tribes of Mosquitos who, under the title of King, without being recognized, is supported by the English force to which at present there is no equal force in this port to offer opposition, in support of the unquestionable right which the State of Nicaragua asserts over the coast of the Sea of the Antilles comprehended within the shore of her territories;

to which Walker replied on the same day:

> As your Government had invested you with no power to recognize the authority of the King of Mosquito at the mouth of the St. John's, or to enter into any amicable arrangements for a mutual and beneficial intercourse between the port and the interior, and more particularly as you refused to admit the right of the King to be recognized as an independent Prince, you removed all basis for negotiation. . . . Assuming, for the sake of argument, that the King's right could be disputed, and that the Spanish Sovereigns had a right of dominion, from absolute possession, over the territory in question, it would appear that that right devolved upon New Granada rather than upon Central America, for under the colonial [*sic*], the jurisdiction over this territory, after being transferred with frequency from the Viceroyalty of New Granada to the Captain-Generalship of Guatemala (now or lately Republic of Central America) and vice versa, and at one time from both these colonies to the Captain-Generalship of Cuba, was finally restored to New Granada by Royal letters patent dated Nov. 30, 1803. Therefore, if the right of the Spanish sovereigns was valid, so also is that of New Granada; and consequently the pretension of Central America is arbitrary and null.

The *Vixen* left San Juan and on January 4 returned to Bluefields. On January 10, 1848, Lieutenant Colonel Antonio Salas of the Nicaraguan army, under orders of General José Trinidad Muñoz at Granada, with a small body of soldiers entered San Juan, hauled down the Mosquito flag, and ran it up again, union down, under the Nicaraguan flag, took the acting governor, Major George Hodgson and Commander Alexander Little, captain of the port, prisoners and sent them to Serapaquí, about thirty miles up the river. Captain Ryder returned with the *Vixen* on January 16 [19] and demanded of the Commander of the Nicaraguan forces that he rehoist the flag of his Mosquitian Majesty and reinstate Captain Little and

[18] 38 *British and Foreign State Papers* 741. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 174.

[19] 38 *British and Foreign State Papers* 744.

Major Hodgson, under penalty of a report to the British military and naval authorities at Jamaica, and probable consideration of the act of wilful aggression as a "declaration of war against the Queen of England and the King of Mosquito," finally recommending "to the Nicaraguan Government to consider well before they draw down on their country the just vengeance of Her Britannic Majesty."

In March 1848 the British government directed the senior naval officer at Jamaica to send a ship of war to San Juan from time to time to expel any troops or officers, civil or military, belonging to Nicaragua, who might be found there; and if they persisted, to resort to measures of an unfriendly character upon parts of their own coast, to support and maintain, by the British government, the right of the king of Mosquito to the port of San Juan and any other place on the Mosquito Coast which might be invaded by parties from the neighboring states. The *Alarm* and *Vixen* arrived, with Walker on board, at San Juan on February 8, 1848. Captain Loch with 260 men in twelve small boats (and Walker in his own boat, from which he fell overboard trying to save the life of a friend, both being drowned), proceeded up the river to Serapaquí. There on February 12 after ten minutes' fighting Colonel Salas and about two hundred Nicaraguan troops fled from the fort, which Captain Loch then totally destroyed, throwing all the arms into the river, having suffered a loss of two killed and thirteen wounded. He then proceeded up the river to Lake Nicaragua, and captured Fort San Carlos. On March 5, 1848, Captain Loch with seven officers met three commissioners[20] from José Guerrero, supreme director of Nicaragua, on the island of Cuba in Lake Nicaragua, near Granada, and after two days' negotiations signed on March 7, 1848,[21] a treaty which provided:

Art. 1. That the Nicaraguan Government surrender the persons of 2 British subjects, Messrs. Little and G. Hodgson, taken prisoners by the forces of the State of Nicaragua on the 9th day of January, 1848, from the port of San Juan, and that they shall be delivered over to Captain Granville Gower Loch, in this Island of Cuba, within 12 hours from the ratification of this Treaty.

Art. 2. That a Mosquito flag and other effects taken on the same day and from the same port be restored without delay, and that a satisfactory explanation be given by the Nicaraguan Government for the outrage that the Commandant of Her Majesty's forces conceives to have been offered to the British flag in hauling down that of Mosquito under her protection.

Explanation. The Nicaraguan Government were ignorant that the Mosquito flag was so connected with that of England as that an outrage to it should involve an insult to that of Great Britain. They are most anxious to explain that so far from desiring to excite the anger of that Power, it is on the contrary their earnest wish to cultivate the most intimate relations with it.

[20] Francisco Castellón, Minister of Finance, José Juan Zavala, and José María Estrada.

[21] Ratified by the Nicaraguan Assembly, March 8, 1848. 38 *British and Foreign State Papers* 765. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 176.

Art. 3. That the Government of the State of Nicaragua solemnly promise not to disturb the peaceful inhabitants of San Juan, understanding that any such act will be considered by Great Britain as an open declaration of hostilities.

Art. 4. That the tariff established in the port of San Juan upon the occupation of January 1, 1848, shall be considered in full force, and that no Nicaraguan Custom House shall be established in proximity to the said port of San Juan to the prejudice of its interests.

Art. 5. That the British officer in command agrees to retire from Fort San Carlos to San Juan with all the forces, delivering up the hostages, prisoners, and effects now in his possession, immediately after the fulfilment of the various claims agreed upon in this Treaty.

Art. 6. What has been stipulated in this agreement will not hinder the Government of Nicaragua from soliciting, by means of a Commissioner to Her Britannic Majesty, a final arrangement to these affairs.

The two Englishmen and the flag of Mosquito were delivered to Captain Loch that night, and he and his party returned to their ships on March 13, leaving Captain Little in charge of San Juan. On March 14 Captain Loch sent the king of Mosquito a copy of the treaty, advised him to consult with Dr. Green, resident at Bluefields, with reference to all instructions until the arrival of someone to replace Mr. Walker, and requested that Major Hodgson,

may not be again employed on any service or in charge of any important trust connected with the mutual interests of Mosquito and Great Britain, in consequence of the unworthy evidence he gave upon examination before the authorities of Nicaragua, which was dishonourable to him as a brave man and a good subject.

On April 20, 1848, the minister of New Granada in London renewed a protest against (1) the statement of the British government that the king of Mosquito had a right to the coast from the Cape of Honduras to the mouth of the river San Juan, and (2) the reservation of his possible right to territory south of that river; to which Lord Palmerston replied on May 4, 1848,[22] that

the territory of Mosquito has been acknowledged by Great Britain as an independent State for 225 years, and the King of that country has for upwards of 180 years been acknowledged as being under the protection of the British Crown.

Her Majesty's Government, therefore, do not consider themselves under any obligation to discuss with the Government of New Granada the rightful existence of the Mosquito State, which existed as a separate and independent State nearly 2 centuries before New Granada had ceased to be a dependent province of Spain.

With respect to the southern boundary of Mosquito, there are certainly strong grounds upon which the King of Mosquito might claim the sea coast as far as the spot called King Buppan's Landing, which is opposite to the island called Escudo de Veragua; but Her Majesty's Government have recommended the Mosquito Government to confine its claim in a southerly direction to the southern branch of the river St. John; and one main reason with

[22] 38 *British and Foreign State Papers* 771.

Her Majesty's Government for giving that recommendation, was, that thereby all dispute between Mosquito and New Granada would, as they trusted, be avoided.

On March 13, 1848,[23] Sebastián Selinas for Nicaragua notified the British government that "neither the Treaty (of March 7, 1848) nor the occupation of the port of San Juan, which is permitted provisionally, can by virtue of the same exclude or prejudice in any way the rights which the State really believes to appertain to it upon the said port and territory of Mosquito . . . with the confident hope that when the causes shall have ceased which have created the difficulties that have occurred . . . its claim will be heard, and all those possessions restored which we have inherited from our ancestors," as a minister would soon submit personally. Lord Palmerston replied on May 17, 1848, that he would gladly receive the minister but that "friendly relations cannot be maintained unless the State of Nicaragua shall respect the rights and abstain from all aggression upon the territory of Mosquito, a State which, for more than a century, has been acknowledged and protected by Great Britain."

Thus began negotiations which it took twelve years to bring to successful fruition in a final treaty between the principals; but the main issue was for a time diverted by the interest of the United States in the subject. With the discovery of gold in California in 1848 and the increased traffic to the west coast, the United States was growing acutely conscious of the need of improved and accelerated trans-isthmian communication. The Nicaraguan route entered early into the American projects, which naturally favored so far as possible United States control of any interoceanic canal; and the occupation of San Juan, the natural Atlantic terminus, by a British-protected nation caused in the United States excitement and protest rising at times even to talk of war.[24] The Clayton-Bulwer Convention of April 19, 1850,[25] which purported to settle the Nicaraguan ship-canal question between Great Britain and the United States, provided:

> Art. 1. The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever . . . assume or exercise any dominion over . . . the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any State or people for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying or colonizing . . . the Mosquito Coast, or any part of Central America, or of assuming or exercising dominion over the same.

In 1852 the native and adopted citizens of Greytown adopted a constitution for the city, and defined its boundaries as,

> Commencing at the mouth of Indian river, thence running up through the channel of said river 15 miles, thence in a direct line, so as to include the head of the Machuca Rapids,

[23] 38 *British and Foreign State Papers* 772.
[24] *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 273–546. 81 *British and Foreign State Papers* 748.
[25] See Sec. 13, this chap., *infra*.

thence down the San Juan river to its junction with the Colorado, thence down the channel of the Colorado river to the Caribbean Sea.

On March 13, 1852,[26] Secretary of State Daniel Webster instructed Commodore Foxhall A. Parker of the United States navy to proceed to San Juan or Greytown, in view of offenses against property and persons increasing in frequency there, and to see that all reasonable municipal and other regulations in force were respected by the vessels and citizens of the United States resorting thither; explaining that the power in existence at Greytown was claimed to be derived from the Mosquito Indians, who had not been and would not be acknowledged as an independent nation by the United States, but a temporary recognition of the existing authority of the place would not be inconsistent with the policy and honor of the United States. On April 30, 1852,[27] Secretary of State Daniel Webster and British Minister John F. Crampton signed at Washington a statement of bases for the settlement of the differences between Costa Rica and Nicaragua, to be earnestly recommended to those two republics, which included:

Art. 1. The Mosquito Indians may reserve to themselves, out of the territory heretofore claimed or occupied by them on the eastern coast of Central America, a district of country, and the jurisdiction over the same, to be bounded as follows, namely: beginning on the shore of the Caribbean Sea at the mouth of the river Rama (in 11°34′ N latitude and 83°46′ W longitude); running thence due west to the meridian of 84°30′ west longitude from Greenwich; thence due north on said meridian to the river Segovia, Fantasme or Wanx; thence down said river to the Caribbean Sea; thence southerly along the shore of said sea to the place of beginning, (all territory lying southerly or westerly of said reservation, including Greytown, the Mosquitos shall relinquish and cede to Nicaragua, together with all jurisdiction over the same, in consideration of the quarterly payment to them of all import duties collected at Greytown at 10% ad valorem for 3 years. Nicaragua to agree not in any way to molest or interfere with the Mosquito Indians within the territory reserved for them.)

Art. 2. [Nothing in Article 1 shall preclude the conclusion of any voluntary compact and arrangements between Nicaragua and the Mosquito Indians, by which the latter may be definitively incorporated and united with the State of Nicaragua, with equal rights and duties as other citizens.]

Costa Rica approved the proposed bases on June 23, 1852, but Nicaragua rejected them entirely. Beginning with a note by James Buchanan, United States minister in London, on January 6, 1854,[28] the United States urgently pressed on Great Britain her obligation under the Clayton-Bulwer Treaty to withdraw from her protectorate of the Mosquito shore; but the Earl of Clarendon on May 2, 1854, stated the position of Great Britain to be that she did not claim or hold any sovereignty in or over Mosquito; that the treaty did not and was not meant to

[26] Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 202.
[27] *Col. de Trats. Int. de Costa Rica* (San José, 1893), 125.
Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 195.
[28] Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 204–250.

annihilate the protectorate she had long exercised, but simply to confine its powers and limit its influence; and that,

> the United States Government will, it is apprehended, scarcely expect that Great Britain should enter into any explanation or defence of her conduct with respect to acts committed by her nearly forty years ago, in a matter in which no right or possession of the United States was involved.

The wordy and at times acrimonious discussion between Great Britain and the United States over the Mosquito Coast, the Bay Islands Colony, and the boundaries of British Honduras continued without visible progress for the next six years. In an endeavor to placate the United States, as well as to keep a hand in the long-drawn-out negotiations between the United States and Nicaragua, the British government in 1857 started Sir William Gore Ouseley on a special mission via Washington to Central America, to make a definite settlement of all the matters with regard to which the United States and England were at variance: to go first to Guatemala to negotiate a treaty as to the boundaries of British Honduras, then to Honduras to settle the surrender of the Bay Islands, and finally to Nicaragua to arrange the Mosquito Protectorate question. The United States complained at great length because England seemed persistently disinclined to accept the United States view of the requirements of the Clayton-Bulwer Treaty, but was willing to carry its general tenor into execution by separate negotiations with the Central American republics. On August 9, 1858,[29] the Earl of Malmesbury, British foreign minister, sent Sir William drafts of two treaties he was to negotiate with the republic of Nicaragua, one of friendship, commerce, and navigation and the other relative to the Mosquito Indians, in almost all respects like the Clarendon-Dallas Treaty of October 17, 1856, which failed of ratification, except in making Greytown only a free port, under Nicaragua, and not a free city. Costa Rica was to be asked to sign with Great Britain a treaty recording her accession to so much of the arrangements with Nicaragua as concerned her; and the British government was to use its best exertions to induce the Mosquito king to accept the arrangements, for compensation and other matters, on his behalf. Sir William left the United States in October 1858 on H.M.S. *Valorous*, and reached Greytown in November; but despite the British government's often expressed desire that he conclude the treaties with Nicaragua and Costa Rica before Christmas 1858, he did not succeed in seeing General Tomás Martínez, president of Nicaragua, until December 16 at Realejo and in public audience at León on December 26. He at once began negotiations with Don Pedro Zeledón, Nicaraguan foreign minister, assisted by Sr. Jerónimo Pérez. Sir William refused

[29] 48 *British and Foreign State Papers* 664.

the request of Lic. Zeledón to add to Great Britain's recognition of the sovereignty and independence of the republic of Nicaragua an engagement to protect it.

The treaty of friendship, commerce, and navigation to which, contrary to the intentions of the British Foreign Office, he had given primary importance, over the adjustment as to Mosquitia, was signed on January 18, 1859;[30] but the British government objected to some of the modifications from their original draft and stated definitely that they would not ratify the treaty of commerce without the Mosquito treaty. Sir William submitted the draft of the Mosquito treaty[31] to Lic. Zeledón, who promised on January 28 that the supreme government would communicate its decision upon the matter; but the rumored activities of William Walker and other filibusters, threatening to invade Nicaragua through the Mosquito Coast, alarmed the government, and pushed aside all consideration of negotiations for a time. On March 8, 1859, Lic. Zeledón wrote Sir William at San José, Costa Rica, proposing changes in the Mosquito treaty as drafted, the most important being a promise by Great Britain to continue her protection of the Mosquito coast until "by a triple treaty, the guarantees of the Clayton-Bulwer Treaty shall be agreed upon between Great Britain, the United States and Nicaragua," and a modification of the financial arrangements for the Indians, which Sir William replied he had no power to admit. Nicaragua seemed to fear that she would be unable to defend Greytown and Mosquitia from filibusters when British protection was withdrawn, and so held back from accepting the annexation she had long been so anxious to obtain. In April 1859 the Nicaraguan Senate rejected the proposed Mosquito treaty, because of strong objections to making Greytown an independent city and of making any payments to the Mosquito Indians as "tribute." Sir Charles Lennox Wyke, who had concluded with Guatemala the treaty of April 30, 1859,[32] as to the boundary of British Honduras, replaced Sir William Ouseley in the mission to Honduras and Nicaragua in August 1859, and Lord John Russell, British foreign minister, sent him a new draft of a Mosquito treaty.[33] After signing with Honduras the treaty of November 28, 1859,[34] as to the Bay Islands, Sir Charles reached Managua on December 22, 1859, and in conferences with Lic. Zeledón and Prime Minister Rosalio Cortéz brought finally to a successful conclusion, with but minor departures from the last British draft, the long-drawn-out negotiations.[35] He signed with Lic. Zeledón at Managua on January 28, 1860,[36] a treaty relative to

[30] Ratified by Nicaragua, Feb. 21, 1859; not ratified by Great Britain. Drafts: 48 *British and Foreign State Papers* 667; 50 *ibid.* 154, 170.

[31] 48 *British and Foreign State Papers* 676.

[32] See Sec. 7, this chap., *supra*.

[33] 50 *British and Foreign State Papers* 272.

[34] See Chap. II, Sec. 2, *infra*.

[35] 50 *British and Foreign State Papers* 126–328.

[36] Ratifications exchanged at London, Aug. 2, 1860. 50 *British and Foreign State Papers* 96. *U. S. For. Rel.*, 1867, II, 692. *Rev. de dr. int. et de lég. comp.*, XXXIV (1902), 368. Martens, *Nouv. Rec. Gén. de Traités*, XVI (1860), II, 374.

the Mosquito Indians and to the rights and claims of British subjects, which provided:

Art. 1. Her Britannic Majesty . . . without prejudice to any question of boundary between the Republics of Nicaragua and Honduras, will recognize as belonging to and under the sovereignty of the Republic of Nicaragua, the country hitherto occupied or claimed by the Mosquito Indians within the frontier of that Republic, whatever that frontier may be. The British Protectorate of that part of the Mosquito territory shall cease 3 months after the exchange of ratifications of the present treaty.

Art. 2. A district within the territory of the Republic of Nicaragua shall be assigned to the Mosquito Indians, which district shall remain, as above stipulated, under the sovereignty of the Republic of Nicaragua.

Such district shall be comprised in a line which shall begin at the mouth of the river Rama in the Caribbean Sea; thence it shall run up the mid-course of that river to its source, and from such source in a line due west to the meridian of 84°15′ longitude west from Greenwich; thence due north up the said meridian until it strikes the river Hueso, and down the mid-course of that river to its mouth in the sea, as laid down in Baily's map, at about latitude from 14° to 15° north, and longitude 83° west from the meridian of Greenwich; and thence southerly along the shore of the Caribbean Sea to the mouth of the river Rama, the point of commencement.

But the district thus assigned to the Mosquito Indians may not be ceded by them to any foreign person or State, but shall be and remain under the sovereignty of the Republic of Nicaragua.

Art. 3. The Mosquito Indians, within the district designated in the preceding Article, shall enjoy the right of governing, according to their own customs [and regulations not inconsistent with the sovereign rights of Nicaragua, themselves and all persons residing in such district, without interference from Nicaragua].

Art. 4. . . . Nothing in this Treaty shall be construed to prevent the Mosquito Indians, at any future time, from agreeing to absolute incorporation into the Republic of Nicaragua on the same footing as other citizens of the Republic, and from subjecting themselves to be governed by the general laws and regulations of the Republic instead of by their own customs and regulations.

Art. 5. [Nicaragua will grant the Mosquito authorities for 10 years an annual sum of 5,000 pesos fuertes, to be paid at Greytown half-yearly to the person authorized by the Chief of the Mosquito Indians to receive it; to be collected by a levy on packages of goods imported at Greytown for consumption in Nicaragua.]

Art. 7. [Nicaragua shall constitute and declare Greytown or San Juan del Norte a free port under the sovereign authority of the Republic; but with jury trial in civil and criminal cases and perfect freedom of religious belief for its inhabitants.]

Art. 8. All *bona fide* grants of land for due consideration made in the name and by the authority of the Mosquito Indians since Jan. 1, 1848, and lying beyond the limits of the territory reserved for the said Indians, shall be confirmed [if not over 100 yards square if within Greytown or 1 league square if outside.]

Art. 9. [Great Britain and Nicaragua shall, within 6 months after the exchange of ratifications, appoint each a Commissioner to decide upon the *bona fides* of grants of land beyond the limits of the territory described in Article 1. (*sic*: 2?).]

Art. 10. [The Commissioners shall, before proceeding to business, name some third person to act as arbitrator or umpire in any case or cases in which they may differ in opinion.]

At the exchange of ratifications, by a declaration signed at London on August 2, 1860, it was agreed according to a paragraph added by the Nicaraguan Congress that Article 8 should not apply to grants west of 84°30″ W longitude, but only to grants east of that meridian. A new treaty of friendship, commerce, and navigation was signed at Managua on February 11, 1860,[37] and ratified at the same time as the Mosquito treaty. The commissioners to decide upon the land grants were duly appointed and met at Greytown from November 1, 1861, to April 15, 1865, and made decisions without the aid of a third arbitrator.[38]

George A. Frederick, as chief and president, at Bluefields on September 13, 1861,[39] authorized a municipal constitution for the government of the Mosquito Reservation. He died in 1864, and Nicaragua refused to continue payment of the annuity to his successor, complaining in February 1867 [40] that

Her Majesty's Diplomatic Agent claims the recognition, as Chief of the Mosquitos, of a youth elected without the knowledge of [the Nicaraguan] Government by some Creole foreigners, who are called leading men of Mosquitia, though they are not pure Indians, nor have they received authority from the respective tribes, but who wish to continue in the exercise of the influence which they possessed before as the medium through which England dispensed protection to the Indians.

Great Britain insisted that payments of the annuity under Article 5 of the treaty of January 28, 1860, should be kept up until 1870, but Nicaragua refused to make any further payments. Direct diplomatic correspondence and appeals by Nicaragua to the United States brought no definite result;[41] but finally in 1878 it was agreed to refer the dispute, together with certain questions which had arisen concerning the extent of Nicaragua's jurisdiction over the Mosquito territory, as matters of interpretation of articles of the 1860 treaty, to the arbitration of Francis Joseph, Emperor of Austria, who in April 1879 consented to act. He handed down his award on July 2, 1881,[42] deciding that:

Art. 1. The sovereignty of the Republic of Nicaragua, which was recognized by Articles I and II of the Treaty of Managua of January 28, 1860, is not full and unlimited with regard to the territory assigned to the Mosquito Indians, but is limited by the self-government conceded to the Mosquito Indians in Article III of that Treaty.

[37] 50 *British and Foreign State Papers* 106.

[38] R. Saénz for Nicaragua; James Green for Great Britain. 63 *British and Foreign State Papers* 1185.

[39] 72 *British and Foreign State Papers* 1210.

[40] 58 *British and Foreign State Papers* 878. *U. S. For. Rel.*, 1867, I, 178; II, 690, 697.

[41] *U. S. For. Rel.*, 1875, I, 140, 143, 149, 155, 631; 1876, p. 179.

[42] 72 *British and Foreign State Papers* 1212. *Rev. de dr. int. et de lég. comp.*, XXXIV (1902), 560. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., X (1885), 609.

Art. 2. The Republic of Nicaragua, as a mark of its sovereignty, is entitled to hoist the flag of the Republic throughout the territory assigned to the Mosquito Indians.

Art. 3. The Republic of Nicaragua is entitled to appoint a Commissioner for the protection of its sovereign rights throughout the territory assigned to the Mosquito Indians.

Art. 4. The Mosquito Indians are also to be allowed to hoist their flag henceforward, but they must at the same time attach to it some emblem of the sovereignty of the Republic of Nicaragua.

Art. 5. The Republic of Nicaragua is not entitled to grant concessions for the acquisition of natural products in the territory assigned to the Mosquito Indians. That right belongs to the Mosquito Government.

Art. 6. The Republic of Nicaragua is not entitled to regulate the trade of the Mosquito Indians, or to levy duties on goods imported into or exported from the territory reserved to the Mosquito Indians. That right belongs to the Mosquito Indians.

Art. 7. [Nicaragua is bound to pay over to the Mosquito Indians the arrears of the yearly sums assured them by Article V of the treaty of Managua, without back interest; which arrears now amount to $30,859.03.]

Art. 8. [Nicaragua is not entitled to impose import or export duties on goods in or out of the free port of San Juan del Norte, but may on goods conveyed between San Juan del Norte and territory of the Republic.]

This decision in fact gave almost complete autonomy to the Mosquito Indians, and Great Britain continued to show an interest in supporting their rights. In 1888 the British minister in Central America complained to the Nicaraguan foreign minister that Nicaragua had established a post-office at Bluefields and was stationing troops and a police force and setting up military posts within the Mosquito Reservation. The Nicaraguan minister in Washington delivered a copy of the British note to the United States State Department, and Secretary of State Thomas F. Bayard on November 23, 1888,[43] instructed Edward J. Phelps, United States minister in London, to represent to the British government that the United States had assumed that upon the acceptance by the chief of the Mosquito Indians of the stipulations of the treaty of January 28, 1860, Great Britain's right to further interference with the affairs of the Mosquito Indians was at an end; that the right to establish post-offices and military posts for common defense was an essential incident of paramount sovereignty; that it was important to the United States, in common with all other powers, that Nicaraguan sovereignty should exist in fact as well as in name within the Mosquito Reservation; and that the continued exercise of the claims by Great Britain to interfere on behalf of the Mosquito Indians in any dispute between them and their sovereign was but the assertion of a British protectorate in another form, which the United States could never see with indifference or without concern. The Marquis of Salisbury replied

[43] *U. S. For. Rel.*, 1888, I, 759; 1893, pp. 163–174, 182. 81 *British and Foreign State Papers* 746–762.

on March 7, 1889, that the award of Emperor Francis Joseph had been given more than seven years before, and that no objection had been made to it by the United States government until now; that the 1860 treaty secured certain rights and privileges to the Mosquito Indians, upon whose infringement only Great Britain could remonstrate with Nicaragua; that Great Britain did not claim to intervene in every dispute between the Mosquito Indians and their sovereign, but only within the limits of the report annexed to the Emperor of Austria's award; and that Great Britain had no desire to assert a protectorate in substance or in form or anything in the nature of a protectorate.

In January 1894[44] a threatened invasion by Honduran troops at Cape Gracias á Dios caused about two hundred Nicaraguan troops to be sent to Bluefields for transportation northward to the border by ship; and although they were quartered on vessels in the harbor only from January 5 to 15, the Mosquito officials demanded that they be removed or disarmed, a demand which the Nicaraguan commissioner in Bluefields refused. On February 10 and 11 Nicaraguan troops occupied Bluefields, and took possession of all the public buildings, at which the Mosquito chief protested to the British consul at San Juan and he to General Carlos A. Lacayo, Nicaraguan commissioner at Bluefields. On March 2 the British warship *Cleopatra* landed fifty soldiers at Bluefields and compelled the Nicaraguans to raise the state of siege which had been declared for the town. On March 3 an agreement was reached between General Lacayo and Captain Assheton G. Curzon-Howe of the *Cleopatra* for a temporary provisional government for the Mosquito Reservation, under a municipal council of four (later changed to eight), and all but a police guard of twenty of the Nicaraguan soldiers went on board the *Cleopatra* and were taken to San Juan. Street rioting broke out in the evening of March 3, and continued until a detachment of one hundred British marines was brought ashore from the *Cleopatra*, and restored order. These men were replaced on March 16 by marines from H.M.S. *Canada*, who were reëmbarked on March 20, when General Lacayo undertook to form a provisional government. On April 10, 1894, one hundred and sixty Nicaraguan troops landed and took possession of Bluefields and indulged in some abuse of the Indians and other residents. Trouble between the officials and civilians, especially Jamaican negroes, continued until July 6, when Chief Robert Henry Clarence issued a proclamation that he had reassumed his rightful authority. The Indians and negroes thereupon rose, drove out the Nicaraguan officials, and set up a government of their own. Nicaraguan Foreign Minister José Madriz went to Bluefields as special commissioner and took over the local government. On August 16 he

[44] *U. S. For. Rel.*, 1894, Appen. I, 234–363; 1895, II, 1034.

caused to be arrested two United States citizens doing business in Bluefields, J. S. Lampton and George B. Wiltbank, on charges that they had engaged in the revolutionary movement in July, and sent them with twelve British subjects under guard to Managua, whence they all were summarily deported from Nicaragua by ship. The two United States citizens were allowed to return to Bluefields on October 26 to settle their private affairs. Great Britain announced that she did not accept Nicaraguan rule in the Mosquito territory and would seek redress for the expulsion of her subjects. General Rigoberto Cabezas, as intendent-general of the Atlantic coast of Nicaragua, continued to treat with the Indians; and eventually they decided that fourteen years of autonomy with no legitimate government, misappropriation of funds, and virtual slavery, was long enough. Eighty-two delegates of twenty-three villages in convention signed on November 20, 1894,[45] a declaration that,

> Whereas, the change which took place on February 12 of the present year was due to the efforts of the Nicaraguan authorities to free us from slavery in which we were, . . . in the exercise of a natural right and of our own free will, we hereby declare and Decree
>
> Art. 1. The Mosquitos population shall be ruled by the Constitution of Nicaragua and its laws, and shall remain under the protection of the flag of the Republic.
>
> Art. 2. All the receipts produced by the coast of the Mosquitos shall be devoted to their own benefit, thus reserving to ourselves economic autonomy; but they shall be collected and administered by the fiscal employees of the supreme Government.
>
> Art. 3. The indigenes shall be exempt, in times of peace and of war, from all military service.
>
> Art. 4. No personal tax shall be laid upon the Mosquitos.
>
> Art. 7. The Mosquito Indians, alone, shall elect their officials.
>
> Art. 11. As a vote of gratitude to the President of the Republic, General J. Santos Zelaya, to whose efforts we owe the enjoyment of our liberties, the territory which until now was called the Mosquito Reserve shall henceforth be called the Department of Zelaya.

Nicaragua accepted this act of reincorporation, and the long-disputed area became at last really a part of the republic.[46]

British subjects in the Mosquito Reserve claimed to have suffered personal or property injuries at the hands of the Nicaraguan authorities during the troubles of 1894; and in 1895[47] Lord Rosebery caused the custom house at Corinto, on the Pacific, to be seized by British forces and held for nine days, in support of a claim for £15,500 for wrongful expulsion of the twelve British subjects in August 1894. Great Britain and Nicaragua signed at London, November 1, 1895,[48]

[45] *Arch. Dipl.*, 2e Sér., LIV (1895), 122.

[46] Ricardo Beltrán y Rózpide, "La Mosquitia" (Madrid, 1910), *Bol. de la Real. Soc. Geog.*, LII, 438–460.

[47] *Amer. J. Int. Law*, XXX (1936), 388.

[48] Ratifications exchanged at London, June 30, 1896. 87 *British and Foreign State Papers* 55. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXIII (1898), 162.

a convention providing (Article 1) for a mixed commission of a British representative knowing Spanish, a Nicaraguan representative knowing English, and a jurist not a citizen of any American state, to be named by the president of the Swiss Confederation if the two governments could not agree, (Article 2) to sit at Bluefields, and (Article 4) decide claims according to the evidence tendered and the principles of international law, by a majority of votes (Article 7), decisions of the commission to be final, and amounts awarded to be paid by the government of Nicaragua within three months. In a protocol on the day of signing, the British government agreed not to support the claim of any person not a British subject, and Nicaragua agreed to accept such status as duly established, subject to the production of proof to the contrary. Notwithstanding the arguments and representations of the United States and the virtual annexation of 1894, Great Britain continued to take a special interest in the Mosquito territory; and after a quiet renewal of negotiations with Nicaragua for the more accurate recognition of the new status, the two nations signed at Managua on April 19, 1905,[49] a treaty which provided:

Art. 1. The High Contracting Parties agree that the Treaty of Managua of January 28, 1860, is and shall remain abrogated.

Art. 2. His Britannic Majesty agrees to recognize the absolute sovereignty of Nicaragua over the territory that constituted the former Mosquito Reserve, as defined in the aforesaid Treaty of Managua.

Art. 3. In consideration of the fact that the Mosquito Indians were at one time under the protection of Great Britain; and in view of the interest that His Majesty's Government and the Nicaraguan Government take in their welfare, the Nicaraguan Government agree to grant them the following concessions: (*a*) [to propose to the National Assembly a law exempting for 50 years all Mosquito Indians and Creoles born before 1894 from military service and from all direct taxation]; (*b*) [to allow Indians to live in their villages and follow their own customs]; (*c*) [to concede 2 years more for the legalization of rights of property]; (*d*) [to reserve public pasture lands for the use of the inhabitants near each Indian village]; and (*e*) [to grant suitable public land of approximate value for any lands belonging to Mosquito Indians or Creoles allotted to other persons].

Art. 4. [The ex-Chief Robert Henry Clarence will be permitted to reside in Nicaragua and enjoy full protection so long as he does not transgress the laws nor tend to incite the Indians against Nicaragua.]

Art. 5. The Mosquito Indians, and the other inhabitants of the former Reserve, will enjoy the same rights as are secured by the laws of Nicaragua to other Nicaraguan citizens.

By a new treaty of friendship, commerce, and navigation signed by Great Britain and Nicaragua at Managua, July 28, 1905,[50] it was agreed that (Article 2) the

[49] Ratifications exchanged at London, Aug. 24, 1906. 98 *British and Foreign State Papers* 69. *U. S. For. Rel.*, 1905, p. 702; 1906, II, 1181. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXV (1908), 367.

[50] Ratifications exchanged at London, Aug. 24, 1906. 98 *British and Foreign State Papers* 72. *U. S. For. Rel.*, 1905, pp. 695–701, 704; 1906, II, 1183. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXV (1908), 390.

privileges of the free port of San Juan del Norte should be abolished and the port made the same as others of the republic.

A typical British commercial outpost planted in foreign territory and maintained by force of arms and diplomacy against the natural sovereign states, grew into a settlement claiming firm territory and eventually absorbed the native inhabitants into a protectorate. Objected to not only by neighbors but by a much more adequate adversary with other interests at stake, expanding rights were slowed down, halted, and finally eliminated. The small nation has acquired full sovereignty, and it is improbable that such moral interest as remains will ever be permitted to become a source of real trouble while the powerful ally and quasi-partner looks on.

13. Nicaragua–United States

(*See map, p. 2, supra*)

Quickly after Central America had gained independence from Spain, the construction of an interoceanic canal across the isthmus received new consideration. On February 8, 1825, Sr. Cañez, minister of the Republic of the Center to the United States, sent the State Department a note calling attention to the important object of uniting the Atlantic and Pacific oceans by a canal through Nicaragua, and offering to the United States a share in the great enterprise, by a treaty perpetually securing the advantages of such a canal to the two nations. Nor were the sea-trading nations of Europe unaware of the possibilities and the benefits. In 1830 William I, King of the Netherlands, negotiated through General Verveer with the Central American Union a convention for a canal.[1] In 1835 [2] the United States Senate asked President Andrew Jackson to consider the expediency of opening negotiations with the governments of Central America and New Granada to protect by treaty individuals or companies who might undertake to open a ship canal across the isthmus. In 1845 [3] Louis Napoleon obtained from Nicaragua a concession to organize a company to construct the "Napoleon Canal of Nicaragua," but when the United States Civil War was ended and armies of veterans were ready to face the French in Mexico, Louis as emperor concluded it might not be so desirable to make Nicaragua a French colony.

In 1847 [4] the display of interest by Great Britain in transportation across the Isthmus of Panama [5] and a possible ship-canal through Nicaragua [6] seems for

[1] *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 8, 16, 21.

[2] *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 17.

[3] *Diario de la Habana* (Cuba, 1846), Num. 363. *Gac. Of.* (Guatemala, 1846), II, 141.

[4] *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 260, 294.

[5] See Sec. 14, this chap., *infra*.

[6] See Sec. 12, this chap., *supra*.

the first time seriously to have impressed public men in the United States with the canal as a subject in which their country also might have an important practical stake. With the gold rush of 1849 to California a rapidly increasing number of residents of the eastern states sought to reach the west coast by ship, with transfer in some way across the isthmus; and the State Department of the United States began to interest itself in their welfare and safety. Various enterprises and projects were set on foot for constructing an interoceanic canal up the river San Juan to Lake Nicaragua and thence in some way across the narrow ridge to the Pacific; but most of the money subscribed went to the expenses and profit of the promoters, and, although some actually got as far as obtaining official concessions from Nicaragua, few of the schemes on the land actually went beyond the survey stage. Frequent changes of government and control in Nicaragua resulted in grants and revocations of a succession of authorizations, more or less conflicting and of various degrees of plausibility and backing. Elijah Hise, United States chargé d'affaires in Central America, signed with Buenaventura Selva, Nicaraguan chargé, without authorization from the State Department, at Guatemala City on June 21, 1849,[7] a treaty by which Nicaragua (Article 1) granted to the United States or to a company of its citizens the exclusive right to build within the territories of Nicaragua a canal, road, or railway between the Caribbean Sea and the Pacific Ocean; (Article 5) to the United States, the right to erect, arm, and occupy forts and fortifications at the ends and along the lines of such works necessary for their protection and defense; (Article 10) to the United States or the company all public land within two leagues square at the termination at the seas on each side, to serve for the sites of two free cities; and (Article 12) the United States agreed to protect Nicaragua in the possession and exercise of sovereignty and dominion over all territories within her just and true limits and boundaries. This treaty failed to receive the approval of the United States State Department, as also did another signed by United States Minister Ephraim George Squier at León on September 3, 1849,[8] by which the two nations (Article 35) severally and jointly agreed for twenty years to protect and defend in the full and perfect enjoyment of its work, the American Atlantic and Pacific Ship Canal Company, of Cornelius Vanderbilt and other United States citizens, which had a contract with Nicaragua dated August 27, 1849. The Clayton-Bulwer Convention of April 19, 1850,[9] be-

[7] *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 324–331, 404–408. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 180.

[8] *Dipl. Corr. of the U. S.* (Manning, Washington, 1933), III, 50, 55, 57, 71, 91–134, 360–369, 375–386. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 183.

[9] Ratifications exchanged, July 4, 1850. 9 Stat. L. 995. *Treaties of the U. S.* (Malloy, 1910), I, 659. *U. S. For. Rel.*, 1882, pp. 271–283; 1912, p. 556. 38 *British and Foreign State Papers* 4; 40 *ibid.* 953–1087; 41 *ibid.* 757–890; 42 *ibid.* 153–237; 73 *ibid.* 851; 74 *ibid.* 785; 94 *ibid.* 470. *The Clayton and Bulwer Convention* (London, 1856). Freeman Snow, "Legal Rights under the Clayton Bulwer Treaty," *Harvard Law Review* (1889), III, 53–73. Sullivan & Cromwell, *Compilation of Executive Documents and Diplomatic Correspondence* (New York, 1898) 3 vols. Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 187 *Arch. Dipl.*, 2e Sér., XIII (1885), 147. *Question Anglo-Américaine* (Paris, 1856).

tween Great Britain and the United States attempted to clear away some of the international rivalry engendered by the earlier approach of the British and to ensure neutrality for a canal over the Nicaraguan route by providing:

Art. 1. The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy or fortify, or colonize or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications; or of occupying, fortifying or colonizing Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America, or of assuming or exercising dominion over the same.

Art. 2. [Vessels of the contracting parties traversing the canal shall, in case of war between the parties, be exempted from blockade, detention or capture; and for such distance from the two ends of the canal as may be found expedient to establish.]

Art. 3. In order to secure the construction of the said canal, the Contracting Parties engage that if any such canal shall be undertaken upon fair and equitable terms, by any parties having the authority of the local Government or Governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used or to be used for that object, shall be protected, from the commencement of the said canal to its completion, by the Governments of Great Britain and the United States, from unjust detention, confiscation, seizure, or any violence whatsoever.

Art. 4. [The parties will use their good offices to procure the establishment of a free port at each end of the canal.]

Art. 5. [When the canal is completed, the parties will protect it from interruption, seizure or unjust confiscation and will guarantee its neutrality, so that it may be forever open and free and the capital invested therein secure.]

Art. 6. [The parties engage to invite every State with which they have friendly intercourse to enter into similar stipulations with them; and themselves to enter into treaty stipulations with such of the Central American States as they deem advisable, for the purpose of more effectually carrying out the great design of this Convention.]

Art. 7. [The parties will give their support and encouragement to such persons or company as may first offer, with the necessary capital, to commence the canal.]

Art. 8. [The parties agree to extend their protection by treaty stipulations to any other practical communications, whether by canal or railway, across the isthmus which connects North and South America; and equally to the interoceanic communications should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. The canal or railway shall be open to the citizens and subjects of the parties on equal terms.]

After a previous difficulty in Greytown in March 1853 [10] concerning property of the Accessory Transit Company, there was renewed trouble in May 1854 over

[10] 46 *British and Foreign State Papers* 859–888; 47 *ibid.* 1004–1038.

property of the company and a charge of insult to the person of Solon Borland, United States minister to Central America. Secretary of State William L. Marcy demanded an apology from the authorities of San Juan, and the U.S.S. *Cyane* under Commander George N. Hollins was ordered to proceed for a second time to that port. She arrived on July 11, 1854, and on July 12 Commander Hollins gave notice that if the demands for satisfaction were not forthwith complied with he would at 9 A.M. on July 13 bombard the town. Lieutenant W. D. Jolley, commander of the British schooner *Bermuda* at anchor in the harbor protested against the proposed action as threatening destruction of British property it was his duty to protect, "but the force under my command is so totally inadequate for this protection against the *Cyane*, I can only enter this my protest." Commander Hollins replied that the outrages upon the property and persons of citizens of the United States could only be regarded as piratical, that he would enforce the reparation demanded, and that he regretted exceedingly that "the force under your command is not doubly equal to that of the *Cyane*." The ship's batteries fired shot and shell into the town on July 13 from 9 to 9:45, 10:30 to 11 A.M. and 2 to 2:30 P.M. At 4 P.M. Lieutenants Pickering and Fauntleroy were sent ashore with a party to complete the destruction of the town by fire, which was accomplished in about two hours; and the *Cyane* sailed for Boston on July 17, 1854.

United States Secretary of State Lewis Cass signed with Antonio José de Yrisarri, Nicaraguan minister in Washington on November 16, 1857,[11] a treaty of friendship, commerce, and navigation, providing (Article 14) for interoceanic transit by United States citizens and their property by any route which might be constructed, on the same terms as Nicaraguan citizens, (Article 15) the United States to extend their protection to and guarantee the neutrality of all such routes of communication, (Article 20) this not to affect the claim of Costa Rica to a free passage by the San Juan River to and from the ocean. This treaty, however, was not ratified by either country. After the ratification of the Zeledón-Wyke Treaty of January 28, 1860, between Great Britain and Nicaragua had settled the Mosquito Coast problem by ending formally the British protectorate and restricting the Indians to a district extending south only as far as the river Rama, at Bluefields, it became simpler to deal with Nicaragua and Costa Rica so far as necessary, concerning the port and river of San Juan del Norte (Greytown).

The Central American Transit Company, a New York corporation of Henry G. Stebbens and other United States citizens, obtained from Nicaragua

[11] Rep. of Sec. of State Evarts; Exec. Doc. 112, IV, Ser. 1885, 46th Cong., 2d Sess. (Washington, March 9, 1880), 102. 47 *British and Foreign State Papers* 782.

on April 12, 1860,[12] a contract granting the exclusive privilege for fifty years of building a transit line by canal or railroad across Nicaragua. The company obtained in June 1867 the promise of the government to permit certain advantageous modifications in its contract, and went to work to dredge and restore the harbor of Greytown. Nicaragua signed with the United States at Managua on June 21, 1867,[13] a treaty of friendship, commerce, and navigation which provided:

> Art. 14. The Republic of Nicaragua hereby grants to the United States and its citizens and properties the right of transit between the Atlantic and Pacific Oceans across the territories of that Republic by whatever means of communication, natural or artificial, by land or by water, which now exists or which may exist or be constructed hereafter, under the authority of Nicaragua, to use and enjoy in the same manner and on equal terms for both Republics and their respective citizens; Nicaragua reserving, nevertheless, her right of sovereignty over the same.
>
> Art. 15. The United States agree to extend their protection to all those means of communication just mentioned and to guarantee their neutrality and innocent use [and to use their influence with other nations to induce them to guarantee equal neutrality and protection. Nicaragua will establish a free port at each end of the route.]

On August 30, 1867, Nicaragua granted to Maximilian Sonnenstern, a German civil engineer, and the company he might form, the exclusive privilege of establishing a line by canal between Lakes Managua and Nicaragua by the Tipitapa River, and for interior traffic down the river San Juan to Greytown; but the United States succeeded in having the Sonnenstern contract defeated in the Nicaraguan Congress as in conflict with the rights of the Nicaraguan Transit Company.[14] After protracted negotiations Tomás Ayón, foreign minister of Nicaragua, signed with Michel Chevalier, a French citizen, at Paris on October 6, 1868,[15] a contract granting an exclusive privilege to build a canal between the Atlantic and Pacific oceans, with a strip of land four kilometers (2.5 miles) wide on each side and free ports at either end, to begin work within three years, and operate for ninety-nine years, after which the canal and all accessories were to become the property of Nicaragua, Costa Rica to be invited to adhere and her refusal to make the agreement null.

As the actual construction of a canal over the Nicaraguan route seemed to come nearer to reality, Costa Rica began to make more forcible protests to Nica-

[12] Signed by Lic. Pedro Zeledón, Nicaraguan minister of foreign affairs, and by José Rosa Pérez for the Company. Approved by Nicaragua, March 20, 1861. 51 *British and Foreign State Papers* 914–926; 60 *ibid.* 999–1012.

[13] Signed by Lic. Tomás Ayón, Nicaraguan foreign minister, and Andrew B. Dickinson, United States minister to Nicaragua. Ratified by Nicaragua, March 4, 1868; ratified by the United States, Feb. 7, 1868; ratifications exchanged at Managua, June 20, 1868. *Der. de Gentes Positivo de Nicaragua* (Bonilla, Managua, 1922), II, 333. *Treaties of the U. S.* (Malloy, 1910), II, 1279. 58 *British and Foreign State Papers* 1162. Arts. 14–19, Rep. of Sec. of State Evarts; S. Ex. Doc. 112, IV, Ser. 1885, 46th Cong., 2d Sess. (Washington, 1880), 130

[14] *U. S. For. Rel.*, 1867, II, 695–704. John E. Body, *The Inter-Oceanic Canal via Nicaragua* (New York, 1870).

[15] 61 *British and Foreign State Papers* 1266–1276.

ragua concerning concessions of the use of territory adjoining the boundary which might in any way affect Costa Rica's interests; in other words, she desired to be let in with Nicaragua for a share of any benefits that might accrue.[16] It was obvious that the nearness of Costa Rican territory on the south of the river San Juan and Lake Nicaragua might create serious international complications for the company digging or operating the canal, and accordingly Nicaragua was inclined to make an amicable arrangement with Costa Rica if possible. The two countries signed at San José on June 18, 1869,[17] a long treaty (of forty-five articles) on interoceanic canalization, which provided:

Art. 1. [Costa Rica adheres to the Ayón-Chevalier contract signed in Paris Oct. 6, 1868, and guarantees to the concession holder on her own territory and for all that concerns her the same privileges which Nicaragua guaranteed, as stipulated in the following articles.]

Art. 2. The term of the concession shall be 99 years to be counted from the day of opening of the canal.

Art. 3. The concession holder shall select the route which, according to the studies by experts, he may deem most suitable, but it is now declared that the canal must go up the river San Juan to Lake Nicaragua, cross the Lake, and end in the Pacific between the extreme points, Salinas and Realejo.

Art. 4. [Costa Rica, like Nicaragua, shall have the right to be represented in the deliberations of the Council of Administration, by a commissioner with an advisory vote; and if she subscribes a million pesos, at least, her commissioner shall have an active vote.]

Art. 5. Costa Rica shall receive from the Canal company one fifth part of the sum which is to be paid to Nicaragua from the annual earnings.

Art. 6. [Necessary lands for the site of the canal, banks, approaches, docks, warehouses, etc. shall be furnished free by the state.]

Art. 8. [The same for the dumps.]

Art. 10. The State grants to the concession holder ownership of 4 kilometers [2.5 miles] of land on each side of the bed of the canal.

Art. 11. The State grants further to the concession holder a strip of land of the same width of 4 kilometers [2.5 miles] along the shore of Lake Nicaragua from the river San Juan on the north and east to San Miguelito and on the south and west from the right bank of the river San Juan to the mouth of the river Sapoá.

Art. 14. [Construction material may be brought in free of duty or any tax.]

Art. 17. [Citizens of Costa Rica employed by the Company steadily for over one month shall be exempt from all civil and military service.]

Art. 18. Costa Rica guarantees so far as it can the Company and its agents against all attack from the exterior and by Costa Ricans from the interior, each Republic being responsible for the proceedings of its nationals.

Art. 20. The concession holder is authorized to close the river Colorado if he deems it

[16] See Sec. 1, this chap., *supra*.

[17] Signed by Agapito Jiménez, Costa Rican foreign minister, and Mariano Montealegre, Nicaraguan minister to Costa Rica. Ratified by Costa Rica (Decr. Leg. 5), Feb. 21, 1870. *Col. de las Leyes de Costa Rica de 1870* (San José, 1873), 17. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 409. 61 *British and Foreign State Papers* 1144.

necessary and in general to make in the river San Juan and its affluents and tributaries and in its branches and outlets like the Colorado, dikes, changes of direction, (deepenings, extensions, etc. and any other construction necessary to maintain the level of water in the canal).

Art. 26. Costa Rica undertakes not to grant any later concession for the opening of a canal or railroad from San Juan de Nicaragua to the Pacific Ocean.

Art. 31. The concession holder may establish foreign colonies on the lands granted him; but the two Republics preserve in every case their rights of sovereignty over such lands, as if they belonged to citizens of the country.

Art. 32. The vessels of Costa Rican and Nicaraguan citizens may navigate the canal under a tariff with a reduction of not less than 25%, so long as they carry exclusively interior commerce.

Art. 34. [The parties undertake reciprocally to initiate the necessary steps with the Governments of France, England and the United States that the neutrality of the canal, already individually guaranteed by these three powers by virtue of the treaties which they have celebrated with Nicaragua in 1860 and 1868, may be the subject of a general convention on the bases of the Clayton-Bulwer treaty, according to the benevolent promise made by these three powers in the said treaties of 1860 and 1868.]

Art. 35. [The two terminals shall be free ports.]

Art. 36. [Any difference between Costa Rica and the Company shall be decided by an arbitral commission of one member named by Costa Rica, one by the Company and a third by the Ministers of France, England and the United States resident in Central America, if these powers guarantee the canal contract.]

Art. 38. [At the end of the 99 years of the concession, the canal and its works shall belong to both Republics, each taking what has been built in its own territory.]

Art. 39. [From ratification, the Company must be formed and the work begun in 3 years, and the canal definitely opened in 12 years.]

Like its predecessors, the Chevalier company collapsed, and the treaty of June 18, 1869, was abandoned. Other private contracts were made by the Nicaraguan executive from time to time, and refused approval by Congress, or lapsed by change of government or failure of their own promoters,[18] but Nicaragua seemed always to prefer that the United States government should back the canal.[19] There was included in the United States sundry civil appropriations bill of 1870 [20] an item of $30,000 to be expended under the direction of the president for an examination and survey of the routes of Tehuantepec and Nicaragua, to ascertain the practicability of a ship canal at those places between the Atlantic and Pacific oceans. The United States in March 1872 [21] sent an expedition on the U.S.S. *Kansas* under Lieutenant-Commander Alexander F. Crosman to explore the Nicaraguan isthmus. Commander Crosman, with six of the crew, was drowned on April 12 crossing the bar at San Juan, and succeeded by Commander

[18] E.g., Franco Lefevre, March 1871. *U. S. For. Rel.*, 1871, p. 670. Aristides P. Blanchet (Tipitapa river), March 1882. *U. S. For. Rel.*, 1882, pp. 34–42. Atlas Steamship Co., Ltd. (Navigation of river and lake), June 1897. *U. S. For. Rel.*, 1897, pp. 421–425.

[19] *U. S. For. Rel.*, 1871, pp. 671–678; 1872, pp. 160–161; 1874, pp. 186–194; 1883, pp. 57–72; 1894, pp. 460–465; 1896, pp. 374–376.

[20] Act of July 15, 1870, c. 292. 16 Stat. L. 291 at 306.

[21] *U. S. For. Rel.*, 1872, pp. 462–465.

Chester Hatfield, who continued the survey. The United States deficiency appropriations bill of 1872 [22] gave the Navy Department $20,000 to complete the survey of a route for a ship canal between the Atlantic and Pacific oceans by the route of Tehuantepec and Nicaragua, and $5,000 to complete the survey of the Darien route. On February 7, 1876,[23] the United States interoceanic canal commission reported in favor of a canal from Greytown to Brito, 156 miles long, through the river San Juan and Lake Nicaragua.

A new feeling in the United States that any interoceanic canal should be under the exclusive control of the United States and not shared with Great Britain or other world powers seems to have been first formally enunciated by President Rutherford B. Hayes when he wrote to Congress on March 8, 1880:[24]

> The policy of this country is a canal under American control. The United States cannot consent to the surrender of this control to any European power or to any combination of European powers. If existing treaties between the United States and other nations or if the rights of sovereignty or property of other nations stand in the way of this policy — a contingency which is not apprehended — suitable steps should be taken by just and liberal negotiations to promote and establish the American policy on this subject consistently with the rights of the nations to be affected by it.
>
> The capital invested by corporations or citizens of other countries in such an enterprise must in a great degree look for protection to one or more of the great powers of the world. No European power can intervene for such protection without adopting measures on this continent which the United States would deem wholly inadmissible. If the protection of the United States is relied upon, the United States must exercise such control as will enable this country to protect its national interests and maintain the rights of those whose private capital is embarked in the work.
>
> An interoceanic canal across the American Isthmus will essentially change the geographical relations between the Atlantic and Pacific coasts of the United States and between the United States and the rest of the world. It would be the great ocean thoroughfare between our Atlantic and our Pacific shores, and virtually a part of the coast line of the United States. Our merely commercial interest in it is greater than that of all other countries, while its relations to our power and prosperity as a nation, to our means of defense, our unity, peace, and safety, are matters of paramount concern to the people of the United States. No other great power would under similar circumstances fail to assert a rightful control over a work so closely and vitally affecting its interest and welfare.

Nicaragua and Salvador signed at San Salvador on November 15, 1883,[25] a diplomatic convention which provided:

> 1st. In consideration of the fact that the Interoceanic Canal through the territory of Nicaragua should bring indisputable benefits to all the Republics of Central America, as well

[22] Act of May 18, 1872, c. 172. 17 Stat. L. 122 at 130.

[23] *For. Aff.*, VIII (1930), 417–429. John T. Sullivan, Report; H. Ex. Doc. 107, XXXIII, Ser. 2112, 47th Cong., 2d Sess. (Washington, 1883), 143. 70 *British and Foreign State Papers* 317.

[24] *Messages and Papers of the Presidents* (Richardson, New York, 1897), X, 4537.

[25] Signed by General Joaquín Zavala, minister of Nicaragua to Salvador and Dr. Salvador Gallegos, foreign minister of Salvador. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 291. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 228.

in the economic as in the political and social order, the Government of Salvador agrees to join that of Nicaragua and those of the other sections, in guaranteeing 3 % net annual proceeds, for 20 years, on the sum which may be invested in the Canal, not to exceed 75,000,000 pesos; limiting, therefore, its responsibility to the interest upon 18,000,000 capital, at the said rate, from the day on which the work is terminated and opened to general traffic.

2nd. The Government of Nicaragua, for its part, in return for the aforesaid guarantee, undertakes to share with the Government of Salvador all the privileges, concessions and benefits which have been reserved in the contract with the Canal Company of May 25, 1880.

With the boundary treaty of the same day [26] Costa Rica and Nicaragua signed at San José on January 19, 1884,[27] a new convention concerning the construction of the interoceanic canal, which provided:

Art. 1. Costa Rica guarantees 3 % annual net proceeds on 15,000,000 pesos, or 3/500 of 1 % on 75,000,000 pesos to be invested in the construction of the Nicaragua Canal. This guarantee shall last 20 years and shall begin on the day on which the Canal is finished and opened to general traffic.

Art. 3. For the purposes of the aforesaid guarantee it is agreed that not more than 1,000,000 pesos shall be recognized as costs of exploitation and support of the Canal; and any deficit charged to Costa Rica in proportion to the interest on the 15,000,000 which she guarantees, shall be met by the concession holding Company.

Art. 4. Nicaragua undertakes to impose conditions on the concession holding Company requiring the exact and proper investment of the capital and good administration of the enterprise; and further to make common to Costa Ricans all the advantages reserved for Nicaraguans in the concession of April 24, 1880 or which may hereafter be obtained in their favor from the same enterprise.

Art. 5. It is understood that this pact shall not affect in any way the Jerez-Cañas treaty, whose validity Costa Rica maintains, as to the *statu quo* in the observance of said treaty, on which both Republics are agreed.

As early as 1854 [28] the United States charged Great Britain with disregarding or evading provisions of the Clayton-Bulwer Convention in her dealings with Guatemala, Honduras, and Nicaragua, with regard to British Honduras, the Bay Islands, and the Mosquito Coast. James G. Blaine, secretary of state under President James A. Garfield, in 1881 felt that the Clayton-Bulwer Treaty required modifications, and tried without success to get Great Britain to agree.[29] Frederick T. Frelinghuysen, his successor under President Chester A. Arthur, declared in 1882 that as the primary objects of the treaty had been the construction of a Nicaraguan canal by British capital and the dispossession of Great Britain from settlements in Central America and neither of these had been accomplished, the

[26] See Sec. 1, this chap., *supra*.

[27] Not ratified. *Col. de Trats. Int. de Costa Rica* (San José, 1893), II, 371. *Col. de Trats. Int. de Nicaragua* (Bonilla, Managua, 1909), 469.

[28] 46 *British and Foreign State Papers* 244–325; 47 *ibid.* 661–758, 782–789; 48 *ibid.* 630–759; 50 *ibid.* 126–328.

[29] *U. S. For. Rel.*, 1881, pp. 554–559.

treaty was abrogated by acts of Great Britain herself.[30] England of course would not agree to this view, and for fifteen years more could not be induced even to recognize the defensive necessity as to control of the canal and the strength of public opinion thereon in the United States. Secretary Frelinghuysen signed with General Joaquín Zavala, Nicaraguan minister, at Washington on December 1, 1884,[31] a convention providing for the construction by the United States of a canal under joint ownership with Nicaragua, the United States to protect the integrity of the territory of Nicaragua. President Arthur submitted the convention to the United States Senate on December 10, 1884, and he and Secretary Frelinghuysen tried hard to have it approved, but the short session refused on January 29, 1885, to confirm it and adjourned on March 3, 1885, without having acted on it again. President Grover Cleveland withdrew it from consideration by the Senate on March 13, 1885,[32] because although he favored a United States controlled canal, he thought it should be built by private enterprise rather than by the government. Aniceto G. Menocal, civil engineer, United States Navy, obtained from the government of Nicaragua on March 23, 1887,[33] a second concession for the building of a canal (one of April 24, 1880, to him as agent of the Provisional Interoceanic Canal Society having lapsed in 1884) and he and his associates on February 20, 1889,[34] secured United States incorporation as the Maritime Canal Company of Nicaragua, on the strength of the Nicaraguan concession and such powers as Costa Rica might confer. A bill to amend the charter of the company was introduced in the United States Senate by Senator John Sherman of Ohio for the Committee on Foreign Relations on January 10, 1891,[35] but after some debate was on February 27 abandoned for the session. The United States sundry civil appropriations bill of 1895 [36] carried an item of $20,000 to be expended under the direction of the secretary of state to ascertain the feasibility, permanence, and cost of construction and completion of a Nicaraguan canal by the route contemplated in an act to amend the charter of the Maritime Canal

[30] *U. S. For. Rel.*, 1882, pp. 271–283; 1883, pp. 418–421.

[31] S. Doc. 291, XXVI, Ser. 3615, 55th Cong., 2d Sess. (Washington, 1898), 4–11. *Rev. de dr. int. et de lég. comp.*, XVII (1885), 183–190. *Arch. Dipl.*, 2e Sér. (1885, I), XIII, 332.

[32] Message of March 13, 1885. *Messages and Papers of the Presidents* (Richardson, 1897), XI, 4888. Manuel M. de Peralta, *El Canal Interoceánico de Nicaragua y Costa Rica* (Bruselas, 1887).

[33] Approved by the Nicaraguan Congress, April 24, 1887. *U. S. For. Rel.*, 1887, p. 115; 1888, I, 100–106; 1897, pp. 417–419.

[34] Act of Feb. 20, 1889, c. 176. 25 Stat. L. 673. 81 *British and Foreign State Papers* 742. Interoceanic Canal and the Monroe Doctrine; H. Rep. 224, I, Ser. 1982, 46th Cong., 3d Sess. (Washington, Feb. 14, 1881). Correspondence in Relation to the Proposed Interoceanic Canal (Washington, 1885); Reprint of S. Ex. Docs. 112, 46th Cong., 2d Sess.; 194, 47th Cong., 1st Sess.; and 26, 48th Cong., 1st Sess. Aniceto G. Menocal, Report of United States Nicaragua Surveying Party; S. Ex. Doc. 99, V, Ser. 2337, 49th Cong., 1st Sess. (Washington, 1886). Henry Clay Taylor, *The Control of the Pacific* (The Forum, 1887), III, 407.

[35] S 4827. Debated Feb. 6, 20 and 21, 1891. *Cong. Rec.*, 51st Cong., 2d Sess., XXII, II, 1123; III, 2224–34, 2970–90, 3052–70, 3073–76; IV, 3410. *Arch. Dipl.*, 2e Sér. (1891, I), XXXVII, 207.

[36] Act of March 2, 1895, c. 189. 28 Stat. L. 910 at 948. President Cleveland on April 25, 1895 appointed as the Nicaragua Canal Board Lieutenant-Colonel William Ludlow, Corps of Engineers, United States Army, Civil Engineer M. T. Endicott, United States Navy and Alfred Noble, C. E.

Company of Nicaragua which was passed by the United States Senate on January 25, 1895;[37] and the sundry bill of 1897[38] appropriated an additional $150,000 to continue the survey, and provided for a commission of one army engineer, one navy officer, and one engineer from civil life to make plans for the construction of a Nicaragua canal. The public works appropriations bill of 1899[39] gave the president $1,000,000 to make a full and complete investigation, by United States Army engineers if he thought best, of the Isthmus of Panama, and particularly of the Nicaraguan and Panama routes, for a ship canal.

The diplomatic controversy with Great Britain was pursued by conferences and notes from 1880 with great earnestness on both sides but with little or no progress until 1898.[40] At last Secretary of State John Hay, after submitting a draft convention on January 11, 1899, was able to get Lord Pauncefote, the British minister, to sign at Washington on February 5, 1900,[41] a convention "supplementary to the Convention of April 19, 1850," which, after reciting that Great Britain and the United States were "desirous to facilitate the construction of a ship-canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the Convention of April 19, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the 'general principle' of neutralization established in Article 8 of that Convention," provided:

> Art. 1. It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Convention, said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.
>
> Art. 2. [The parties, to preserve and maintain the "general principle" of neutralization of the canal and waters adjacent within 3 marine miles of either end, adopt 7 rules, substantially as in force for the free navigation of the Suez Maritime Canal.]
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> Art. 3. [Other powers are to be invited to adhere to this Convention.]

This convention met serious opposition when it was forthwith submitted to the United States Senate, which on December 20, 1900, gave its advice and consent

[37] S. 1481. *Cong. Rec.*, 53d Cong., 3d Sess., XXVII, I, 158–160; II, 1358. H. R. 7639. H. Rep. 1779, II, Ser. 3346 (Washington, Feb. 7, 1895).

[38] Act of June 4, 1897, c. 2. 30 Stat. L. 11 at 59. Nicaragua Canal Commission appointed by President William McKinley, July 24, 1897; dissolved, March 31, 1899. Rear Admiral John G. Walker (retired), Chairman; Captain Oberlin M. Carter, Corps of Engineers, United States Army; Professor Lewis M. Haupt, C. E. *Messages and Papers of the Presidents* (Richardson), XIV, 6326, 6366. *Report of the Nicaragua Canal Commission, 1897–99* (Baltimore, 1899), with Maps and Profiles.

[39] Act of March 3, 1899, c. 425, Secs. 3–6. 30 Stat. L. 1121 at 1150.

[40] 90 *British and Foreign State Papers* 114. Lindley Miller Keasbey, *The Nicaragua Canal and the Monroe Doctrine* (New York, 1896).

[41] 94 *British and Foreign State Papers* 468. Charles Cheney Hyde, "The Significance of the Hay-Pauncefote Convention," *Harvard Law Review*, XIV (1900), 52–58. *Amer. J. Int. Law*, XX (1926), Spec. Supp., 74.

to ratification only with three amendments: (1) after a reference to the Clayton-Bulwer Convention, to add "which Convention is hereby superseded"; (2) to add to the rules for free navigation the proviso that none of the conditions and stipulations should apply to "measures which the United States may find it necessary to take for securing by its own forces the defence of the United States and the maintenance of public order," and (3) to strike out Article 3, for inviting other powers to adhere to the convention. Great Britain felt unable to accept the amendments [42] and preferred to retain unmodified the provisions of the Clayton-Bulwer Convention. On December 1, 1900, the United States signed with Costa Rica [43] and Nicaragua [44] identical but separate executive agreements providing that when the president of the United States should be authorized by law to acquire control of such portions of their territory as might be necessary, for a canal from near San Juan del Norte to Brito, the United States would enter into negotiations with each nation to settle the plan and necessary agreements in detail, the course and terminals of such canal to be those stated in the treaty between the United States and Great Britain of February 5, 1900. The United States was not willing to let the existing situation with Great Britain continue, and Secretary of State Hay signed with Lord Pauncefote at Washington on November 18, 1901,[45] a treaty to facilitate the construction of a ship canal which provided:

Art. 1. The present Treaty shall supersede the Convention of April 19, 1850.

Art. 2. It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or Corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

Art. 3. The United States adopts, as the basis of the neutralization of such ship canal [and the waters adjacent within 3 marine miles of either end, the first six rules, substantially as in the Convention of Constantinople of Oct. 28, 1888, for the free navigation of the Suez Canal].

Art. 4. It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty.

[42] 94 *British and Foreign State Papers* 473–485.

[43] See Sec. 1, this chap., *supra*.

[44] *U. S. Treaty Series*, No. 260. *Treaties of the U. S.* (Malloy, 1910), II, 1290.

[45] Ratifications exchanged at Washington, Feb. 21, 1902. 32 Stat. L. II, 1903. *Treaties of the U. S.* (Malloy, 1910), I, 782. Interoceanic Canal, S. Doc. 85, XI, Ser. 4221, 57th Cong., 1st Sess. (Washington, 1901). Charles Cheney Hyde, "The Isthmian Canal Treaty," *Harvard Law Review*, XV (1902), 725–732. Mary W. Williams, *Anglo-American Isthmian Diplomacy, 1815–1915* (Washington, 1916). *Amer. J. Int. Law*, V (1911), Supp., 199–214. *U. S. For. Rel.*, 1902, p. 517. 94 *British and Foreign State Papers* 46. *Rev. de dr. int. et de lég. comp.* (1901, III), XXXIII, 5–14. *Arch. Dipl.*, 3e Sér., IV (1901–02), 81; IV (1903), 146. L. Oppenheim, *Int. Law* (4th ed., 1928), 390.

The new Senate advised ratification on December 16, 1901, and, the issue with Great Britain being thus satisfactorily disposed of, turned its attention to the Interoceanic Canal bill which had been passed by the House on May 2, 1900, but had not been taken up in the Senate. The 57th Congress passed and President Theodore Roosevelt approved the Act of June 28, 1902,[46] which dealt primarily with the Panama canal route and rights[47] but provided:

> Sec. 4. That should the President be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this Act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the Nicaragua route, shall through the said Isthmian Canal Commission cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea near Greytown, by way of Lake Nicaragua, to a point near Brito on the Pacific Ocean. . . . In the excavation and construction of said canal the San Juan river and Lake Nicaragua, or such parts of each as may be made available, shall be used.
>
> Sec. 6. That in any agreement with the Republic of Colombia, or with the States of Nicaragua and Costa Rica, the President is authorized to guarantee to said Republic or to said States the use of said canal and harbors, upon such terms as may be agreed upon, for all vessels owned by said States or by citizens thereof.

In a revolt in Nicaragua in 1910, Great Britain in February, and the United States in May, warned both sides not to fight in certain government-held towns; and each landed about one hundred soldiers to enforce their orders.[48] United States Secretary of State Philander C. Knox signed with Nicaraguan Minister Salvador Castrillo at Washington on June 6, 1911,[49] a convention approving a loan to be secured upon the customs receipts of Nicaragua, but the agreement failed of ratification by the United States.

George T. Weitzel, United States minister at Managua, notified the State Department on December 15, 1912, that the government of Nicaragua desired to negotiate with the United States a treaty giving a thirty-year option to acquire a strip of land for canal purposes under conditions similar in form to those of Panama, specifying, (1) payment of $3,000,000 gold with a further sum and an annual rent charge on exercise of the option, (2) the grant of a subsidiary privilege

[46] Chap. 1302; 32 Stat. L. I, 481.

[47] See Sec. 15A, this chap., *infra*.

[48] *Amer. J. Int. Law*, XXX (1936), 385.

[49] *Amer. J. Int. Law*, V (1911), 1044; V, Supp., 291. *U. S. For. Rel.*, 1912, pp. 1071–1105; 1913, pp. 1034–1067; 1916, pp. 898–917. *For. Aff.*, III (1924), 51. George T. Weitzel, "The United States and Central America, Policy of Clay and Knox," *Ann. Amer. Acad. Pol. & Soc. Sci.*, CXXXII (1927), 115–126. *Rev. gén. de dr. int. pub.*, XIX (1912), 130.

of putting the existing waterway into navigable condition for light-draught vessels, and (3) the grant of naval stations in the Gulf of Fonseca and on Corn Island, if desired. This proposal resulted in Minister Weitzel and Diego Manuel Chamorro, Nicaraguan foreign minister, signing at Managua on February 8, 1913,[50] a secret convention which was submitted by President William H. Taft to the United States Senate on February 24, 1913, but was not acted on during 1913. Amendments proposed by Nicaragua led to negotiations for replacing the treaty with a new one, of which a draft was received by the United States State Department on October 31, 1913. Costa Rica learned informally of the signing of the treaty of February 8, 1913, and on April 17, 1913,[51] protested to Secretary of State William J. Bryan as well as to Nicaragua that the treaty was in flagrant violation of Article 8 of the boundary treaty of April 15, 1858, between Costa Rica and Nicaragua and of Paragraph 10 of the arbitral award of President Grover Cleveland of March 22, 1888, between Costa Rica and Nicaragua, by both of which [52] Nicaragua was bound not to enter into any interoceanic canal agreement without previously consulting Costa Rica; and that not only did Costa Rica oppose the treaty but that it was impossible to build an interoceanic canal in Nicaragua without affecting Costa Rican lands and waters. Nicaragua replied that the convention of February 8, 1913, was not a final canal treaty but only an option dealing with the rights the United States might exercise in the event of the construction of a canal through Nicaragua. Salvador in September 1913 invited the governments of Costa Rica, Guatemala, and Honduras to send representatives to a meeting at San Salvador to discuss and perhaps protest against the proposed protectorate over Nicaragua and the acquisition of stations in Fonseca Bay by the United States, an invitation which Costa Rica declined unless the government of Nicaragua should also be invited, and Guatemala and Honduras declined unconditionally on September 23, 1913. Salvador renewed the invitation for a conference at Managua, which the Nicaraguan foreign minister protested to Salvador was an improper interference in Nicaraguan affairs without Nicaragua's consent or participation. Salvador on October 21, 1913, protested to Secretary Bryan that the Gulf of Fonseca was an historic bay subject by international law to the exclusive dominion and sovereignty and since 1839 to the still undivided and joint ownership of the three riparian states, no matter how far it ran inland or how wide at the mouth, even though over six nautical miles, and that therefore Nicaragua could not alienate any part of it by a ninety-nine-year renewable lease without the previous advice and consent of Honduras and Sal-

[50] Ramón Rojas Corrales, *El Tratado Chamorro-Weitzel* (San José, 1914). *Rev. gén. de dr. int. pub.*, XX (1913), docs. 65.

[51] *U. S. For. Rel.*, 1913, pp. 1021–1034; 1914, pp. 953–969.

[52] See Sec. 1, this chap., *supra*.

vador. Colombia in December 1913 protested to Nicaragua against the lease to the United States of Great and Little Corn Islands, since they belonged to Colombia; to which Nicaragua replied on December 24, 1913, that she had incontestable dominion over the Atlantic coast belonging to her between the republics of Honduras and Costa Rica and over the islands comprised therein. On February 4, 1914, President Adolfo Díaz of Nicaragua asked President Woodrow Wilson to include in the canal convention a provision embodying the substance of the Platt Amendment with Cuba.[53] On February 18, 1914, Secretary Bryan wrote the Nicaraguan minister that Honduras and Salvador had previously seemed to agree with Nicaragua in holding that their jurisdiction over the Gulf of Fonseca was several and not undivided and joint; and that the United States would have at heart the interests of Central America no less than its own, and would offer no obstacle to the restoration of the Union nor interfere in the political affairs of Central America. Salvador stood by her protest; and Nicaragua told the United States that part of the Bay of Fonseca was given exclusively to Nicaragua by the demarcation with Honduras under the Gámez-Bonilla Boundary Treaty of October 7, 1894.[54] On July 7, 1914, Costa Rica and, on July 8, Salvador protested to Secretary Bryan against the inclusion of any clause similar to the Platt Amendment, which would weaken the autonomy of the republic of Nicaragua. Secretary Bryan on July 16 informed Costa Rica and Salvador that negotiations with Nicaragua had not been concluded and that no treaty had been presented to the United States Senate for ratification, but the State Department was conferring in confidence with the Foreign Relations Committee in regard to a tentative draft; and on July 24 assured Costa Rica that any rights she had would not be disregarded. The Thomson-Urrutia Treaty of April 6, 1914,[55] with Colombia being before the United States Senate, on July 6, 1914,[56] Senator William E. Borah of Idaho presented a resolution to consider it and the Nicaraguan treaty (not yet before the Senate) in open session; the resolution was debated on July 16 and ruled out on a point of order, sustained by the Senate. Secretary Bryan signed with General Emiliano Chamorro, Nicaraguan minister at Washington on August 5, 1914,[57] a convention which provided:

Art. 1. The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary

[53] See Chap. II, Sec. 7, *infra*.

[54] See Sec. 8, this chap., *supra*.

[55] See Sec. 15A, this chap., *infra*.

[56] S. Res. 411. *Cong. Rec.*, 63d Cong., 2d Sess., LI, XII, 11614–18, 12138–41.

[57] Ratified by Nicaragua, April 13, 1916; by the United States, with amendments, June 19, 1916; ratifications exchanged at Washington, June 22, 1916. 39 Stat. L. II, 1661. *U. S. Treaty Series*, No. 624. *Treaties of the U. S.* (Malloy, 1923), III, 2742. *La Gaceta*, Año XX, Num. 195, 1 (Managua, Aug. 25, 1916). *Amer. J. Int., Law*, X (1916), 344; X, Supp., 258. *U. S. For. Rel.*, 1916, p. 849. *For. Aff.*, III (1925), 470. 108 *British and Foreign State Papers* 520. *Survey of Int. Affairs*, 1927 (London, 1929), 479–516; *ibid.*, 1930 (London, 1931), 397–406. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., IX (1919), 350. *Rec. des Cours* (1934, I), XLVII, 88. Vote, 55 to 19, *Cong. Rec.*, 64th Cong., 1st Sess., LIII, III, 2770.

rights necessary and convenient for the construction, operation and maintenance of an interoceanic canal by way of the San Juan river and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated and maintained to be agreed to by the two governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

Art. 2. To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of ninety-nine years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of ninety-nine years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

Art. 3. [The United States upon the exchange of ratifications shall pay for the benefit of Nicaragua $3,000,000 gold.]

The United States Senate in giving its approval on February 18, 1916, attached an amendment, which was accepted by Nicaragua:

Provided, That, whereas, Costa Rica, Salvador and Honduras have protested against the ratification of the said Convention in the fear or belief that said Convention might in some respect impair existing rights of said States; therefore, it is declared by the Senate that in advising and consenting to the ratification of the said Convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said Convention is intended to affect any existing right of any of the said named States.

The United States Congress by Act of September 8, 1916,[58] provided the $3,000,000 to be paid for Nicaragua's benefit.

Costa Rica learned of the signature of the Bryan-Chamorro Convention, and protested to Secretary Bryan on August 31, 1914, repeating the references to the Cañas-Jerez Treaty of April 13, 1858, and President Cleveland's award of March 22, 1888. In January 1915 [59] Secretary Bryan thought the misunderstanding with Costa Rica removed, on the basis of a treaty for the purchase of an option similar to that with Nicaragua (with no Platt Amendment included in

[58] Chap. 464, 39 Stat. L. 802. *U. S. For. Rel.*, 1915, p. 1118.

[59] *U. S. For. Rel.*, 1915, pp. 1104–1119.

either), and perhaps the purchase of Cocos Island; and he tried to negotiate with Salvador and Honduras for the purchase of a naval base from them, if they wished. Boaz W. Long, United States minister in San Salvador, reported on February 11, 1915, not the slightest desire on the part of Salvadorian officials to enter into such an arrangement with the United States, but in March President Meléndez seemed to think land for a naval base could be granted if the United States would help put Salvador on a gold basis and establish a free college in Salvador for young men of Central America.

News in February 1916 [60] that the Committee on Foreign Relations of the United States Senate had reported favorably the Bryan-Chamorro Treaty evoked renewed protests along the old lines from Colombia, Costa Rica, and Salvador. On April 11, 1916, Secretary of State Robert Lansing wrote Colombia that her remonstrance against the inclusion of Great and Little Corn Islands in any engagement made by Nicaragua with the United States seemed to be a matter primarily for discussion between Colombia and Nicaragua. Secretary Lansing on March 1 and 13 respectively called the attention of Costa Rica and Salvador to the amendment added by the United States Senate intended to safeguard their rights, but this did not satisfy either of those nations.

On March 24, 1916,[61] Costa Rica filed in the Central American Court of Justice [62] a complaint against Nicaragua alleging that (1) the Bryan-Chamorro Treaty of August 5, 1914, violated the rights of Costa Rica under the Cañas-Jerez Treaty, the Cleveland award, and the Central American Treaty of Washington of December 20, 1907; (2) such violation of Costa Rica's rights rendered the Bryan-Chamorro pact void; and (3) the omission to consult Costa Rica rendered the Bryan-Chamorro Treaty null and void, especially with respect to Costa Rica; and asking an immediate interlocutory decree, pending final decision, that (*a*) as to a canal across Nicaraguan territory the *status quo* of the preëxisting right in Costa Rica be maintained and that (*b*) Nicaragua and the United States be notified formally by telegraph and mail of the institution of the action. The magistrate from Nicaragua happened to be absent at the time, and pending his return Nicaragua on April 1 sent the Court a long telegram, confirmed by letter of April 26, stating that she had in making the treaty confined herself wholly within her legitimate rights, had obeyed the Cleveland award, and had never had notice from Costa Rica of any objection to the treaty; furthermore, that the Court could hear controversies only after the chancelleries of the countries in-

[60] *U. S. For. Rel.*, 1916, pp. 811–862.

[61] By Luis Castro Ureña, a lawyer of San José. *Demanda; Anexos* (San José, 1916). *Complaint with Appendices*, Translation (Washington, 1916).

[62] Magistrates Angel María Bocanegra of Guatemala, President, Daniel Gutiérrez Navas of Nicaragua, Manuel Castro Ramiréz of Salvador, Nicolás Oreamuno of Costa Rica and Saturnino Medal of Honduras.

volved had found they could come to no diplomatic settlement; and so she hoped the Court would abstain from taking jurisdiction of the action. The Nicaraguan magistrate rejoined the Court on April 24, and on May 1, 1916, the Court unanimously decreed that the governments of Costa Rica and Nicaragua were under obligation to maintain the *status quo* that existed between them prior to the treaty that gave rise to the present controversy; and that Nicaragua should be notified, but not the United States, because that government was not a party to the litigation. Nicaragua put in her answer on August 25, 1916; and having voted on September 22 on fourteen questions [63] framed by the president, the Court on September 30, 1916,[64] handed down its decision, signed by all five judges, which after a lengthy examination of the preliminaries, arguments of fact, legal bases, allegations, complaint, and evidence, the peremptory exception and analysis of the action, declared that:

> First, the peremptory exception interposed by the High Party Defendant is denied, and, in consequence, this Court is competent to decide the complaint brought by the Government of the Republic of Costa Rica against the Government of the Republic of Nicaragua.
>
> Second, the Government of Nicaragua has violated, to the injury of Costa Rica, the rights granted to the latter by the Cañas-Jerez Boundary Treaty of April 15, 1858, by the Cleveland Award of March 22, 1888 and by the Central American Treaty of Peace and Amity of Dec. 20, 1907; and
>
> Third, respecting the prayer in the complaint asking that the Bryan-Chamorro treaty be declared null and void, this Court can make no declaration whatsoever.

The Court found [65] that by the Cañas-Jerez Treaty the Bay of San Juan del Norte on the Caribbean and Salinas Bay on the Pacific were common to the two republics, and, consequently, the legal principle of co-ownership was perpetuated as to both those terminal points of a possible canal. Nicaragua at once [66] officially declared that she rejected the decision *de plano* and refused to abide by it; and on November 9, 1916, the secretary of the Court reviewed the case in a communication to the governments of Guatemala, Honduras, and Salvador.[67]

Salvador's complaints of March 3, 1916, and before [68] to the United States having accomplished nothing, on August 14, 1916,[69] Salvador filed in the Central American Court of Justice [70] a complaint against Nicaragua alleging that the

[63] Four decided unanimously; ten by 4 votes against that of the Nicaraguan magistrate.

[64] *El Foro* (San José, Dec. 15, 1916), XII, 353. *Decision and opinion*, Translation (Washington, 1916). *U. S. For. Rel.*, 1916, pp. 862–886. *Amer. J. Int. Law*, XI (1917), 156–160, 181–229; XXVI (1932), 773.

[65] Opinion, Chapter II, 2d Whereas.

[66] *U. S. For. Rel.*, 1916, pp. 886–898.

[67] *Amer. J. Int. Law*, XI (1917), Supp., 3–13.

[68] *La Gaceta*, Año XX, Nums. 236, 249–258 (Managua, Oct. 16–Nov. 11, 1916).

[69] By F. Martínez Suárez, a lawyer of San Salvador. *Demanda, Adición, Anexos* (San Salvador, 1916). *Complaint with Appendices*, Translation (Washington, 1917).

[70] Same magistrates as in Note 62, *supra*.

Bryan-Chamorro Treaty (1) put in danger the national security of Salvador, (2) ignored and violated the rights of ownership possessed by Salvador in the Gulf of Fonseca, (3) violated primordial interests of Salvador as a Central American state, (4) was contrary to Article II of the General Convention of Peace and Amity signed at Washington, December 20, 1907, and (5) could not have been validly concluded; and that (6) direct measures for settlement between Salvador and Nicaragua had met with no success. Salvador also asked that the government of Nicaragua be ordered to abstain from fulfilling the Bryan-Chamorro Treaty of August 5, 1914, and for such other and further relief as might seem to the Court just and proper. On August 15, 1916, Salvador added (as to 6) that Nicaragua had rejected any settlement between the Foreign Offices; and on September 30 and October 2 amplified the prayer for relief to include requests to find that (*a*) the treaty violated the rights of Salvador in the Gulf of Fonseca, (*b*) the treaty violated the rights of Salvador under Article IX of the Washington general treaty of peace and amity, (*c*) the concession of a naval base to the United States compromised the national security of Salvador and nullified her rights of co-ownership in the Gulf of Fonseca, (*d*) the aforesaid concession and lease of Great and Little Corn Islands and the subjection thereof to the laws and exclusive sovereignty of the United States were violative of Article II of the Washington general treaty of peace and amity, (*e*) the concession of the naval station and the lease of the islands violated Article IX of said general treaty, and (*f*) the government of Nicaragua was under obligation to reëstablish and maintain in all respects the legal status that existed between the two litigant republics prior to the Bryan-Chamorro Treaty. The Court on September 6, 1916, the magistrate from Nicaragua dissenting, admitted the complaint, and ordered the two parties to maintain the *status quo* pending final decision; and on October 2, 1916, resolved to admit the additions to the original complaint. Honduras, on being notified by the secretary of the Court of the order of September 6, informed Salvador on September 30, 1916,[71] that she would not join in the demand against Nicaragua, but protested that the right of co-domination alleged by Salvador in the waters of Fonseca Bay did not exist between Honduras and Salvador or any other republic, to which Salvador replied on October 7, 1916, reasserting her right of co-domination in the waters of the Gulf. Nicaragua put in her answer to Salvador's complaint on February 6, 1917, denying the jurisdiction of the Court because a third state was involved and alleging that diplomatic negotiations had not been exhausted; and on February 19 the lawyers for Salvador and Nicaragua made oral arguments before the Court. Having voted on March 2 on twenty-four

[71] *U. S. For. Rel.*, 1916, p. 890.

questions [72] framed by the president, the Court on March 9, 1917,[73] handed down its decision, signed by all five judges, which after a lengthy examination of the arguments of fact and law, the answer, the peremptory exceptions, analysis of the action, establishment of a naval base, the primordial interests of Salvador as a Central American state, violations of Articles II and IX of the general treaty of peace and amity, and the obligation of Nicaragua to reëstablish and maintain the *status quo ante*, declared that:

First, the Court is competent to take cognizance of and decide the present action by Salvador against Nicaragua;

Second, the exceptions interposed by the High Party Defendant are denied;

Third, by the concession of a naval base in the Gulf of Fonseca the Bryan-Chamorro treaty menaces the national security of Salvador and violates her rights of co-ownership in the said Gulf;

Fourth, the said treaty violates Articles II and IX of the Treaty of Peace and Amity signed at Washington Dec. 20, 1907;

Fifth, the Government of Nicaragua is under the obligation, availing itself of all possible means provided by international law, to reëstablish and maintain the legal status that existed prior to the Bryan-Chamorro treaty between the litigant Republics;

Sixth, the Court refrains from rendering any decision [in regard to enjoining Nicaragua to abstain from fulfilling the Bryan-Chamorro treaty]; and

Seventh, [in regard to any other and further relief] the Court also refrains from rendering decision.

The judges voted unanimously that the Gulf of Fonseca [74] was an historic bay possessed of the characteristics of a closed sea; that the parties were so agreed; and that the waters embraced in the inspection zones that pertained to each of the three riparian countries were intermingled at the entrance to the gulf. On March 21, 1917,[75] the National Assembly of Salvador passed a decree, presented to them on March 5, declaring that:

Whereas, the Central American Court of Justice has decided in favor of the suit which the Government of Salvador instituted before it against the Government of Nicaragua in support of the rights which Salvador, jointly with Honduras and Nicaragua, possesses immemorially and peacefully in the Gulf of Fonseca, which always has been considered, by them

[72] Six decided unanimously; nine by 4 votes against that of the Nicaraguan magistrate; eight by 3 votes, concurred in with explanations by the Guatemalan magistrate, and against the vote of the Nicaraguan magistrate; and one by 3 votes against those of the Guatemalan and Nicaraguan magistrates. *Diario Of.*, LXXXII, Num. 449 (San Salvador, March 15, 1917).

[73] *Diario Of.*, LXXXII, 585–600 (San Salvador, March 31, 1917). *Opinion and Decision*, Translation (Washington, 1917). *Amer. J. Int. Law*, XI (1917), 674–730; XXVI (1932), 775.

[74] See also *U. S. For. Rel.*, 1915, p. 115. Jacinto López, *La Cuestión del Golfo de Fonseca* (La Reforma Social, Habana, March 1916). Salvador Rodríguez González, *El Golfo de Fonseca en el Der. Pub. Centroamericano, La Doctrina Meléndez* (San Salvador, 1917). Ernesto Alvarado García, *La Base Naval en el Golfo de Fonseca ante el Der. Int.* (Tegucigalpa, 1931). *Amer. J. Int. Law*, X (1916), 509–542. Philip C. Jessup, *Law of Territorial Waters* (New York, 1927), 398–410. L. Oppenheim, *International Law* (4th ed., New York, 1928), 409 n. 5. *Rec. des Cours* (1929, V), XXX, 397; (1932, II), XL, 667–670.

[75] *Diario Of.*, LXXXII, Num. 553 (San Salvador, March 27, 1917).

and by strangers, in the category of maritime dominion, as the common property of the three States whose coasts are bathed by that sinuosity or indentation in the Central American territory. . . .

Art. 2. Salvador has always possessed in common with Honduras and Nicaragua the aforesaid Gulf of Fonseca, and such possession, immemorial and peaceful, cannot be suspended, interrupted nor in any way affected by any pact, convention or treaty which may be concluded with any foreign nation, without the express consent of Salvador, whose rights on the Gulf only she can alienate or affect.

Art. 3. The provisions of this law in no way modify the rights of ownership which each State may have legally over the islands in the Gulf of Fonseca.

On March 10, 1917, Nicaragua filed with the Court a protest declaring that the decision was null and void and would not be respected; and repeated the statement to the Court on April 16. The Court replied on July 14, and on September 20, 1917, asked Costa Rica, Guatemala, and Honduras to give their moral support toward getting Nicaragua to respect the decision. On November 24, 1917,[76] Nicaragua sent a note to the Central American governments explaining and justifying her attitude in ignoring and rejecting the decisions in both the Costa Rica and Salvador cases. The Central American Court of Justice expired on March 12, 1918.[77]

A new agreement between the United States and Costa Rica for the same purpose as the executive agreement of December 1, 1900, was signed at Washington on February 1, 1923, but was not ratified by either country. In 1929[78] the United States Congress appropriated $150,000 for a survey, by Army engineers, of the desirability and cost of enlarging the facilities of the Panama Canal by additional locks, and of any other route for a canal across the Isthmus, as at Nicaragua. Lieutenant Colonel Dan I. Sultan was put in charge of the survey, and in 1932 he made a report which President Herbert Hoover sent without comment to Congress, contemplating for the Nicaragua route a canal 172.8 miles long, of which seventy miles would be through Lake Nicaragua, to be built in ten years at a cost of $722,000,000, having six twin locks with a depth of 42½ feet over the sills, and requiring from twenty-four to thirty-six hours to pass through, from Brito on the Pacific up the Río Grande to the divide, down the valley of Las Lajas to Lake Nicaragua, across Lake Nicaragua south of Ometepec island and north of the Solentiname group, to Fort San Carlos, down the San Juan River to near the Conchuda Hills, through them, across the valleys of the Panta and San Francisco rivers and the valley of the Limpio to the divide, and down the

[76] *U. S. For. Rel.*, 1917, pp. 1100–1111, 1213.

[77] See Sec. 1, this chap., *supra*.

[78] S. J. Res. 117, Act of March 2, 1929, c. 584. 45 Stat. L. 1539. Deficiency appropriations bill, Act of March 4, 1929, c. 707. 45 Stat. L. 1623 at 1667. *Amer. J. Int. Law*, XXIV (1930), 145.

valley of the Deseado to the Caribbean Sea just north of Greytown.[79] The United States Congress took no action on the report. In August 1934 the Nicaraguan press declared that the United States by not building the canal nor letting anyone else do it was obstructing the progress and national welfare of Nicaragua and should pay, as Secretary Bryan had arranged to pay Colombia for the loss of Panama.[80] In December 1935 Salvador protested that a reported grant by Nicaragua to a Japanese fishing company of a concession with a base at Corinto was contrary to the spirit of the ninety-nine-year privilege given by Nicaragua to the United States for a naval base in the Gulf of Fonseca. In July 1937 President Anastasio Somoza of Nicaragua sought a loan of $3,500,000 from the United States, to canalize the San Juan River, leaving until later the costly portion of the route from Lake Nicaragua to Brito. On January 19, 1938,[81] Representative Edouard Victor Michel Izac of California introduced in the United States House of Representatives a bill authorizing further negotiations and appropriating $300,000,000 as a start toward building a canal through Nicaragua; and on April 7, 1938,[82] Representative Albert E. Carter, also of California, introduced a bill authorizing additional negotiations for the same purpose. On May 8, 1939, President Somoza addressed the United States Congress in Washington, urging the building of a canal, and in talks with President Franklin D. Roosevelt was said to have discussed a moderate draft canal and a parallel highway system. On August 10, 1939, a board of eight United States experts under Lieutenant Colonel Charles P. Grow of the United States Army Engineer Corps sailed for Nicaragua to conduct a preliminary survey; and a second group of United States experts reached Managua on October 24, 1939. Costa Rica as occasion offers still makes known her objection to the Bryan-Chamorro Treaty and is intermittently negotiating with Nicaragua on the matter of canalization of the San Juan River.

The project of an interoceanic canal by this originally favored route has interested the United States for over a hundred years, but except for three complete and numerous partial surveys and investigations, and clearing away after long negotiations the possible interference of Great Britain by treaty, nothing has actually been done. The canal by the Panama route, at first thought too difficult, grew in favor, supplanted the Nicaraguan projects, and has been actually in operation for over twenty-five years. Now the limit of its capacity is being talked about, the United States is to build additional locks and other facilities,

[79] On the Caribbean side, 290 miles by sea or air from Colón to San Juan del Norte; on the Pacific side, 750 miles by sea, 470 miles by air, from Panama City to Brito.

[80] See Sec. 15A, this chap., *infra*.

[81] H. R. 9048; referred to the Committee on Merchant Marine and Fisheries. *Cong. Rec.*, 75th Cong., 3d Sess., LXXXIII, I, 810.

[82] H. R. 10192; referred to the Committee on Foreign Affairs. *Cong. Rec.*, 75th Cong., 3d Sess., LXXXIII. V, 5026.

and with renewed concern over national defense, the desirability of a Nicaraguan canal is again being debated.[83] Before any actual construction is started, the United States will undoubtedly find a means to placate Costa Rica as to advantages on the Caribbean side. As Brito appears to be the Pacific terminal definitely approved by the United States army engineers, it is unlikely that the canal will be built through the Tipitapa River and Managua Lake to the Gulf of Fonseca, which offers the only good harbors on the Pacific side of the Isthmus north of Panama, but the naval base there would naturally form an important auxiliary to the defenses of the canal, and the United States in making final terms may yet have cause to regret that she dealt with Nicaragua so high-handedly without regard for Honduras and Salvador, and aided or allowed her treaty partner to disregard so summarily the two judgments of the Central American Court of Justice.[84] From the Panama precedent and the developments of Nicaraguan events hereinabove related, it is evident that the matter is now entirely within the jurisdiction of the United States and the Central American republics to settle, without lawful interference from any other nation.

14. Panama–Colombia

Panama

Following the grant in 1508 to Alonso de Ojeda of the Realm of New Granada, bounded west by the Atrato River, the land northwest from New Granada came to be known as Tierra Firme, running along the Isthmus to Costa Rica and including, on the Gulf, the Darién River, Nombre de Dios, Bocas del Toro, Almirante Bay, and Los Dorados [1] River; and on the Pacific, Punta Gorda, Punta Careta, and Cape Burica (now in Costa Rica), Punta de Mariatos, Morros de Puercos, Ensenada de Darién, Puerto de Pinos, Morro Quemado, and San Buenaventura Bay (now in Colombia). In 1510 Ojeda left Francisco Pizarro in charge of Urabá, a small settlement on the west shore, opposite Sebastian, on the east shore of the Gulf of Urabá. Becoming discouraged after fifty days and sailing away in two ships, Pizarro met a vessel in command of Martín Fernández de Enciso coming from Hispaniola with provisions. The ships were partially wrecked in a storm, and the expedition returned to Urabá, whence Enciso with one hundred men marched around the Gulf to the westward and founded Santa María la Antigua del Darién, named for the church of Santa María la Antigua in Seville.

[83] *For. Aff.*, VIII (1930), 417–428. Vicente Sáenz, *El Canal de Nicaragua* (Mexico, 1929).

[84] Chandler P. Anderson, *The Disturbing Influence in Central America of the Nicaraguan Canal Treaty* (Washington, 1917).

[1] Río de los Doraces (Indians) or Dorados; an early name for the imaginary Río de las Culebras.

7N
78W
8N
78W
PANAMA
COLOMBIA
GULF OF PANAMA
(PACIFIC)
COCALITA POINT
LA JARDITA
RIO JURADO
ALTOS DE ASPAVE
SERRANIA DEL DARIEN
GULF OF SAN MIGUEL
RIO CHUCUNAQUE
RIO TUIRA
EL REAL
RIO TUPISA
RIO CHICO
SERRANIA DEL DARIEN
RIO LA MIEL
CAPE TIBURON
ESTOLO
TOLO
RIO ATRATO
ANTIGUA
GULF OF URABA
GULF OF DARIEN
(CARIBBEAN)
7W
77W
7N
8N
PANAMA-COLOMBIA
0 5 10 15
ENGLISH MILES

In 1510 López de Olano discovered the mouth of the Chagres or Lagartos River, in Mosquito Bay, and in 1527 Captain Hernando de la Serna descended the river from Cruces to its mouth. Enciso remained in command at Antigua for two years, but in 1512 he was deposed and imprisoned by Vasco Nuñez de Balboa, a bankrupt fencing-master who had been a stowaway on the relief ship from Hispaniola, and had founded Darién in 1510. On September 1, 1513, Balboa sailed with 190 Spaniards and over 200 Indians from the Gulf of Darién westward along the coast as far as Caledonia Bay, where he landed and set out southward. On September 25, 1513, alone on the peak of a low hill, he saw the Pacific Ocean. He marched down to the shore the next day, christened the ocean the Mar del Sur, the bay the Gulf of San Miguel (whose day it was), and, knee-deep in the water, with a sword and a flag took possession for the Crown of Spain of the South Sea and all its bordering lands. On January 19, 1514, the expedition returned to Antigua.

In January 1517 Balboa was arrested by Francisco Pizarro at Pedrárias' behest, and after a trial he was beheaded at Acla for treason. Between 1508 and 1511 Diego de Nicuesa founded Nombre de Dios, a little east of Punta Manzanilla; and on August 15, 1519, Pedrárias Dávila founded old Panama, capital of Castilla del Oro or Tierra Firme, on the Gulf of Panama on the south side of the Isthmus. Since the Pacific side was found to be more healthful, the northern settlers were gradually driven over by the heat, rains, and fevers, and until recent years it was supposed that not a trace remained of Antigua.[2] Pedrárias continued as Adelantado to govern Tierra Firme until on June 1, 1527, having put to death Francisco Hernández de Córdoba at León in 1526, he was named governor of the province of Nicaragua.

On February 30, 1535,[3] an audiencia of Panama was created, under the viceroyalty of Peru, with jurisdiction then or later over the province of Castilla del Oro to Portobelo, Veragua, and on the South Sea towards Peru to but excluding Buenaventura; from Portobelo towards Cartagena, excluding the Río del Darién, with the Gulf of the Urabá and Tierra Firme; bounded by the audiencias of New Granada and San Francisco de Quito, of Santiago de Guatemala, and by the North and South Seas. On November 20, 1542, the audiencia of Panama was ordered suppressed; on September 8, 1563, the audiencia of Guatemala was ordered moved to Panama, and Guatemala was added to New Spain. In 1564 the first president of the audiencia of New Granada arrived from Spain, with jurisdiction over Panama, the Isthmus, and the Mosquito Coast. On June 28, 1568,

[2] On Aug. 27, 1929, the Apostolic Prefect of Urabá reported from Medellín he had found the ruins of Antigua; and on June 16, 1937, the Colombia-Panama Boundary Commission also reported finding the ruins.

[3] *Recopilación de las Indias*, Libro II, Titulo XV, Ley 4. 38 *British and Foreign State Papers* 664.

the audiencia of Guatemala was reëstablished. The isthmian settlements were effectually separated from the continent of South America by the deep and broad valley of the Atrato, and the power of the royal commissioner in Bogotá had long been a mere shadow over the remote province of Panama. The unsettled coast north from the isthmus was also nominally a part of the presidency of New Granada but had been completely neglected by the Bogotá authorities. The whole region was a source of constant trouble in the viceroyalty, and the governor and arrogant audiencia of Panama frequently defied commands received from Bogotá or from Lima.

The Spanish theory of restricting all colonial trade to Spain alone required that all traffic with South America, not only with the west coast colonies but with Argentina and the mountain settlements across the Andes, sail up the Pacific coast to Panama, cross the isthmus by pack train, and be loaded again into ships at Nombre de Dios [4] or, after 1584, at Portobelo. From 1537, fleets from Vera Cruz and from Nombre de Dios or Portobelo met (at first at Santo Domingo and later at Havana), united, and sailed under convoy of Spanish men-of-war for Spain. In 1695 [5] William Paterson formed the "Company of Scotland Trading to Africa and the Indies" and in 1698 brought out an expedition of twelve hundred Scotsmen who founded settlements called New Edinburgh and Caledonia at Darién on the Gulf of Urabá on the north shore of the isthmus. The colony survived protests from France, Holland, and Spain and minor fighting with the Spaniards; but despite the help of two smaller supplementary expeditions in 1699, the settlers could not endure the climate, and in 1700 the Scotsmen capitulated and the colony was definitely abandoned. About 1700 the pirates who infested the Caribbean — English, French, and Dutch deserters and outlaws — began attacking ships of other nations than Spain, whereupon the European navies joined forces and very soon succeeded in nearly exterminating piracy. The audiencia of Panama was suppressed from May 27, 1717, to November 5, 1723. The sending of annual fleets under convoy was abandoned by Philip V in 1735.[6] The audiencia of Panama was on August 20, 1739, placed by Spain under the jurisdiction of the viceroyalty of Santa Fé. The British Admiral Edward Vernon with six ships captured Portobelo on November 22, 1739, with a loss of but seven men, and held it until he was beaten at Cartagena in 1740 and had to retire to Jamaica. The restrictions on inter-colonial traffic between New Spain, Guatemala, New Granada, and Peru were abolished by Charles III on January 20, 1774, but the

[4] *Teatro de la Leg. Univ. de España é Indias* (Madrid, 1797), XXI, 7–56. *Disp. Compl. de las Leyes de Indias* (Madrid, 1930), III, 80.

[5] Act of June 6, 1695. Acts of the Parliaments of Scotland, IX (1822), 377; X (1823), 194, 195, 242, 244, 245, 248, 254, 257; App. 35 ff. to 92. *Parl. Debates*, III (1739), 434.

[6] *Disp. Compl. de las Leyes de Indias* (Madrid, 1930), I, 51.

inroads of the British and French on the Spanish trade had been so severe that by 1779 only one small fleet a year came to Portobelo.

On November 28, 1821, a *cabildo abierto* at Panama City (founded at the present site in 1673) declared the country independent of Spain; and, according to its wish, Panama was incorporated as a department of the republic of (Greater) Colombia; [7] but as late as May 19, 1822, the Spanish Cortes purported to create an intendency in the province of Panama. To prevent foreign trade, a Spanish fleet proclaimed a blockade of the coast of Tierra Firme in 1822 [8] and captured and condemned numerous vessels, at which the Dutch, British, and United States governments protested. A law of June 25, 1824,[9] for the territorial division of the republic of (Greater) Colombia provided:

Art. 10. The Department of the Isthmus comprises the provinces of Panamá and of Veragua (each with capital of the same name).

In November 1840 the departments of Panama and Veragua revolted from New Granada, and succeeded in maintaining their independence as the State of the Isthmus until they rejoined by treaty of December 31, 1841.[10] General Tomás Ciprano de Mosquera, president of New Granada, on August 7, 1847,[11] issued a decree designating provisionally the continental boundaries of the territory of Darién as

Art. 1. On the north, the Atlantic Ocean; on the east, the river Atrato from its mouth to its confluence with the Napipí; on the south, the river Napipí for its whole length, a straight line from its source to the estuary and the bay of Cupica and the Pacific Ocean; on the west, the waters from said source to the head of the inlet of Mandinga, and finally the west coast of said inlet to the point of San Juan.

Art. 2. There belong to the territory of Darién all the islands in the bay of Mandinga, and the others which run to the southwest along the coast, from the island of La Concepción to Puerto Escondido.

Art. 3. There also belong to it, in accordance with the law of June 2, 1846, the islands of the archipelago of Las Perlas in the bay of Panama.

On February 27, 1855,[12] Panama was made a state of the republic of New Granada, and the law provided:

Art. 1. The territory which comprises the provinces of the Isthmus of Panama, to wit, Panama, Azuero, Veraguas and Chiriquí, forms a federal sovereign State, an integral part of New Granada, with the name of State of Panamá.

[7] 9 *British and Foreign State Papers* 411. Decr. 39. *Col. de los Decr. de las Cortes* (Madrid, 1822), IX, 159.

[8] 9 *British and Foreign State Papers* 977–1002; 10 *ibid.* 938–945.

[9] *Cod. Nac. de Leyes de Colombia* (Bogotá, 1924), I, 304.

[10] *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), V, 352, 570–584.

[11] *Cod. Nac. de Leyes de Colombia* (Bogotá, 1928), XII, 380. Across the Atrato to the east was the Territory of Chocó, New Granada.

[12] *Leyes i Decretos de la Nueva Granada en 1855* (Bogotá), 6. *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), V, 377, 700, 703.

Art. 2. The boundaries of the State, on the west, are those which finally may be set between New Granada and Costa Rica. A later law shall fix the boundaries which shall divide it from the rest of the territory of the Republic.

The Panama Railroad Company Concession Law of June 9, 1855,[13] described the territory of Darién as bounded [14] on January 1, 1849:

Art. 7. . . . From Cape Tiburón to the headwaters of the river La Miel and following the ridge along Gandi hill to the Sierras of Chugargún and of Malí, down the Nigue hills to Aspave heights and thence to the Pacific, between Cocalito and La Ardita.

There were frequent incidents between the local authorities and citizens and the self-confident foreigners who were crossing the isthmus westward in ever-increasing numbers; and on April 15, 1856, when Jack Oliver, a citizen of the United States, fired a pistol at a Granadan who was selling fruit in Panama City, there ensued a night riot between the people of Panama and train passengers which, despite the efforts of the governor of the state and the United States consul, did not die out until eighteen men had been killed.[15] Various revolutions against the central Colombian government at Bogotá broke out or were fomented in Panama, sometimes by officers and men of the Colombian regular army, but all were eventually suppressed or died for lack of expected support beyond the isthmus.[16] On March 17, 1885,[17] a revolt broke out on the Pacific side, and a band of armed men led by General Aizpurú seized Panama City. When a small party of police and Colombian soldiers started from Aspinwall to restore order, a band under one Preston pillaged and burned Colón and Aspinwall. English and United States marines came to the aid of the government troops, and by April 3 the uprisings were ended.

A pseudo-revolution for secession from Colombia broke out in Panama City on November 3, 1903,[18] followed on November 6 by the recognition of the revolutionary government by the United States and on November 18, 1903, by the signing of a canal treaty with the United States. The constitution adopted on February 13, 1904,[19] provided:

Art. 3. The territory of the Republic is composed of all the territory from which the State of Panama was formed by the amendment to the Granadan Constitution of 1853, on Feb. 27, 1855, transformed in 1886 into the Department of Panama, together with its islands; and the continental and insular territory which was adjudged to the Republic of Colombia by the Award made by the President of the French Republic on Sept. 11, 1900. The

[13] *Leyes i Decretos de la Nueva Granada en 1855* (Bogotá), 82. *Cod. Nac. de Leyes de Colombia* (Bogotá, 1929), XVI, 249.

[14] With the Department of Cauca.

[15] 49 *British and Foreign State Papers* 1177–1178; 58 *ibid.* 433.

[16] 58 *British and Foreign State Papers* 237, 435.

[17] *Arch. Dipl.*, 2e Sér., XIV (1885), 246.

[18] See Sec. 15B, this chap., *infra*.

[19] Constitución (Panama, 1904; in English, Panama, 1904). *U.S. For. Rel.*, 1904, p. 562. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXI (1905), 641.

territory of the Republic remains subject to the jurisdictional limitations stipulated or which may be stipulated in public treaties concluded with the United States of North America for the construction, maintenance or sanitation of any means of interoceanic transit. The boundaries with the Republic of Colombia shall be determined by public treaties.

Art. 136. The Government of the United States of America may intervene, in any part of the Republic of Panama, to reëstablish public peace and constitutional order, in the event of their being disturbed, provided that that nation shall, by public treaty, assume or have assumed the obligation of guaranteeing the independence and sovereignty of the Republic.

Art. 138. In order to secure for posterity a part of the pecuniary advantages derived from the negotiations for the opening of the Interoceanic Canal, the sum of six million dollars is set aside for investment in securities which shall produce a fixed annual return. Such investment shall be regulated by law.

Art. 145. All measures enacted by the Junta of the Provisional Government from Nov. 3, 1903 to Jan. 15, 1904 are expressly ratified.

Amendments adopted March 14, 1917,[20] did not affect the boundaries. Panama proclaimed her neutrality in the World War on November 13, 1914, but on April 7, 1917, declared war upon Germany. Panama became a member of the League of Nations, November 25, 1920.[21]

Panama desired to avoid some of the border troubles she had seen afflict her older neighbors, and provided in a law of February 11, 1925,[22] amending the Fiscal Code, that:

Art. 71. In a strip of land 15 kilometers [9.3 miles] wide along the land frontiers, when they shall be defined, only native Panamanians can acquire titles to full ownership of the soil. Such titles shall be untransferable to foreign citizens or companies.

This was changed to thirty kilometers (18.6 miles) by a law of December 28, 1928.[23] The law was further supplemented by a presidential decree of December 2, 1931,[24] which provided that temporarily, until the line was marked so that the law of 1928 could apply, in order to assure compliance with this legal provision, upon national lands contiguous to the frontier with Costa Rica on the Pacific slope a polygon thirty kilometers wide and about sixty-six kilometers (41 miles) long from Punta Burica to near Cerro Pando should be inadjudicable (as well as untransferable) to foreign citizens or companies.

The Panama National Assembly on October 14, 1936, passed a resolution to investigate the original handling of the "Constitutional Fund" of $6,000,000 by William Nelson Cromwell, financial agent for the republic, but nothing seems to have come of the investigation.[25]

Panama declared her neutrality in the Hitler war on September 11, 1939.

[20] 124 *British and Foreign State Papers* 1055.

[21] *League of Nations Official Journal*, I (1920), 11, 299.

[22] Ley 29 de 1925. *Leyes de Panama, 1924 a 1925* (Panama, 1925), 200.

[23] Ley 107 de 1928. *Gac. Of.*, Año XXVI (Jan. 11, 1929), 18685.

[24] Decr. 209 de 1931. *Gac. Of.*, Año XXVIII (Dec 9, 1931), 22680.

[25] The $6,000,000 is supposed to have been invested in mortgages on New York real estate, since dwindled.

Boundary

The new republic of Panama was of course a vitally interested spectator, when not an actual participant, in the negotiations between Colombia and the United States to settle the injury caused the former by the separation, and after two years of practice in walking nominally alone began to take thought as to her permanent boundaries. In 1906 the government of Panama sought to claim all the territory described provisionally in the decree of August 7, 1847; but after a conference in New York on March 16, 1907, between United States Secretary of State Elihu Root, Enrique Cortés, Colombian minister in Washington, William I. Buchanan, United States minister in Panama, and William Nelson Cromwell, attorney in fact of Panama, Secretary Root wrote Minister Cortés on August 26, 1907, and Carlos Constantino Arosemena, chargé of Panama in Washington on May 14, 1908,[26] that, after careful examination of the various documents submitted in the recent negotiations, the opinion and mature and final position of the government of the United States was that the boundary line between Colombia and Panama was that described in the Railroad Concession Law of June 9, 1855. After some further negotiations, Sr. Arosemena, minister of Panama in Washington, agreed to accept the line of the law of June 9, 1855, from Cape Tiburón to Aspave heights, but from there to the Pacific he sought to include the territory of Juradó. He signed with Minister Cortés at Washington on January 9, 1909,[27] a pact in which it was agreed:

> Art. 9. The dividing line between the Republic of Colombia and the Republic of Panama shall be as follows:
>
> Starting from Cape Tiburón on the Atlantic, to the headwaters of the river La Miel, and following the ridge along Gandi hill to the Sierras of Chugargún and of Malí, down the Nigue hills to Aspave heights, and thence toward the Pacific at such point and by such line as may be determined by the Arbitration Tribunal hereinafter established.
>
> As to the territory submitted to arbitration [the Juradó region] it is understood that the boundaries and the adjudication of it to either of the Republics shall be fixed by the determination . . . of the Arbitration Tribunal . . . which shall be final.
>
> [The Arbitration Tribunal is to be composed of three members, to be named one by each party and the third by them jointly or, if they cannot agree, by the President of the Republic of Cuba.]

General Rafael Reyes, president of Colombia, in a special message submitted this pact, with a report by Foreign Minister Francisco José Urrutia, together with the

[26] *U. S. For. Rel.*, 1919, I, 77.

[27] Antonio José Uribe, *Colombia y los Estados Unidos de América* (Bogotá, 1931), 426–431. *U. S. For. Rel.*, 1909 pp. 229–233.

treaty of January 9, 1909, with the United States, to the Colombian National Assembly on February 23, 1909, but the two treaties met with such vigorous opposition that largely because of them President Reyes was forced to resign on June 7, 1909. His temporary successor, General Jorge Holguín, withdrew both treaties from the National Assembly by a special message on March 13, 1909, and on July 20, 1909,[28] informed the Assembly that the government had decided to postpone further consideration of them until the 1910 session.

In October 1913 President Woodrow Wilson sent Thaddeus A. Thomson to Bogotá to try to adjust the Colombia-United States difficulty, and after various proposals and drafts on both sides, he signed with Francisco José Urrutia, Colombian foreign minister, the treaty of April 6, 1914,[29] which provided:

> Art. 4. The Republic of Colombia recognizes Panama as an independent nation, and agrees that the boundaries between the two States, taking as base the Colombian Law of June 9, 1855, shall be as follows: from Cape Tiburón to the headwaters of the river La Miel, following the ridge along Gandi hill to the ranges of Chugargún and of Malí, down the Nigue hills to Aspave heights, and thence to a point on the Pacific, equidistant from Cocalito and La Ardita. [The United States will take steps to get Panama to send an agent to conclude with Colombia a treaty of peace and friendship, to establish diplomatic relations and settle all pecuniary obligations between the two countries.]

Acting President Belisario Porras of Panama on July 23, 1919, when the Thomson-Urrutia Treaty was pending ratification by the United States Senate, wrote Assistant Secretary of State William Phillips that Panama was in a position to prove her rights to a boundary line that would follow the Atrato River from its mouth in the Atlantic to a point in the hinterland in a straight line with Cape Corrientes in the Pacific Ocean; but on representation from Secretary of State Robert Lansing that the United States had definitely adopted the line of the law of June 9, 1855, as the boundary, President Porras withdrew from the controversy on January 10, 1920,[30] explaining that he only sought to place under the provisions of the Panama Canal Treaty the Atrato River basin, the only competitor left to the Panama Canal. Ratifications of the Thomson-Urrutia Treaty were exchanged at Bogotá on March 1, 1922, and after long negotiations which began March 23, 1922,[31] United States Secretary of State Charles E. Hughes, Enrique Olaya Herrera, minister of Colombia, and Ricardo J. Alfaro, minister of Panama, agreed in Washington on May 8, 1924, that the latter two republics would on May 15, 1924, enter into diplomatic relations. Jorge Vélez, Colombian foreign

[28] Leandro Medina, *Límite Oriental de Panama* (Bogotá, 1913).

[29] See Sec. 15A, this chap., *infra*.

[30] *U. S. For. Rel.*, 1919, I, 73–80.

[31] *U. S. For. Rel.*, 1923, I, 328–351.

minister, and Nicolás Victoria J., minister of Panama, signed at Bogotá on August 20, 1924,[32] a boundary treaty which provided:

Art. 1. The frontier line between the Republic of Colombia and the Republic of Panama is agreed upon, settled and fixed on the following terms which are the same as those of the Colombian Law of June 9, 1855:

The frontier line shall run from Cape Tiburón to the head waters of the river La Miel, and following the ridge along Gandi hill to the ranges of Chugargún and of Malí, down the Nigue hills to Aspave heights, and thence to a point on the Pacific equidistant from Cocalito and La Ardita.

Art. 2. [Colombia and Panama will name a Mixed Commission, of three persons for each side, to fix and mark upon the ground the frontier line thus agreed upon.]

Art. 3. Where the frontier is not formed by natural features, such as mountains, ridges, etc., the Demarcation Commission shall cause it to be marked with posts, cairns and other lasting monuments, so that the dividing line may be recognized at any time with complete exactness.

Art. 4. If any differences shall occur between the groups of the Commission as to the operations under their charge, such differences shall be submitted for settlement to the two Governments, without interruption therefor of the demarcation of the line.

In 1927 a contract was made with the Colombo-Alemana Aerial Navigation Company to make an aero-photographic study of the river system of the river La Miel and adjacent frontier regions. The governments named the demarcation commission in December 1935,[33] and on January 7, 1936, the commission set out to mark the line, proceeding from both oceans, and worked until June 1937. In December 1937 the points not settled by the demarcation commission were agreed on by an exchange of notes between the chancelleries of the two countries. The entire boundary is 143 miles long.

The correct location of this old interior boundary in an unpopulated region was not seriously disputed between the larger nation and her seceding member; but, complicated by more serious questions with another power involved in the separation, it took over thirty years for the exact line to be formally agreed upon and finally marked on the ground. With the concomitant cash and other adjustments, and the semi-protected situation of the smaller state, it may be assumed that this line is definitely and permanently settled.

[32] Ratified by Colombia (Ley 53), Dec. 5, 1924; ratified by Panama (Ley 65), Dec. 23, 1924; ratifications exchanged at Bogotá, Jan. 31, 1925. *Leyes de Colombia, 1924–25* (Bogotá, 1925), 80. *Leyes de Panama, 1924 a 1925* (Panama, 1925), 103. *League of Nations Treaty Series*, No. 841, XXXIII, 168. 125 *British and Foreign State Papers* 297. Antonio José Uribe, *Colombia . . . y Panama, Las Cuestiones de Límites* (Bogotá, 1931), 471–487, 620–622. *Survey of Int. Affairs, 1925* (London, 1928), II, 431. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér. XXII (1930), 427.

[33] *Mem. de Rels. Ext.* (Panama, 1936), 139–154.

15. Panama–United States

(See map in back pocket)

A. Colombia–United States

As trade and administration began to demand easier and better communication between the mother country and the west coasts of Mexico and South America and the Philippines, explorers and navigators dwelt hopefully on the possibility of connecting the Spanish Main with the South Sea by water. Even the early maps tempted the imagination to follow the eye across the comparatively narrow strip of the isthmus connecting the two great masses of North and South America, to pass in ships directly from trade-hungry Europe to the seemingly limitless markets of the East. Darién, Panama, Nicaragua, Honduras, and Tehuantepec all had from time to time their schemers and supporters. The first road across the isthmus was built in 1519 from Panama on the Pacific to Nombre de Dios on the Caribbean. In 1529 appeared the first suggestion now known of a transisthmian canal. In 1533 the river Chagres or Lagartos was made navigable, for small vessels, from its mouth at Colón on the Atlantic up about twenty-five miles to Venta Cruz, which left only twenty miles to be traversed overland to the Pacific, and in 1534 Charles V ordered a survey of this section with a view to digging a canal. His commissioner reported the obstacles so great that the resources of even the most powerful monarch would not be adequate. In 1567 Philip II ordered a survey of a route across Nicaragua, but on this also the report was highly unfavorable, and the idea of an all-water passage was for a time abandoned. In 1597 the highway route was shortened fifteen miles by shifting the Caribbean terminus from Nombre de Dios to Portobelo.

Vasco de Mendoza in 1605 reported to Philip III the existence of a great river of Darién running from south to north with two branches, one of which (the Atrato ?) entered the Atlantic in the Bay of Acla and the other (the Tuira ?) the Pacific at Puerto Peñas, between Panama City and Buenaventura. The king on May 24, 1607, directed Juan de Borja, president of the audiencia of New Granada, to explore the provinces of Chocó and Dabaibe and the valley of Baeza. Borja commissioned Sancho de Camayo to make the exploration, and he reported, with affidavits from inhabitants of Toro, that Indians were accustomed to pass in their canoes from sea to sea. Diego de Mercado from Guatemala on January 23, 1620, reported to Philip III the possibility and usefulness of connecting the ports of San Juan del Norte and San Juan del Sur by way of the Lake of Granada (Nica-

ragua) and the Desaguadero. Spain of course monopolized the transisthmian land routes and until nearly 1800 forced all the merchandise of her trade with South America and the Philippines to pass over the hilly jungle roads of the isthmus. William Paterson before abandoning his Scotch colony at Darién in 1700 had explored the isthmus and in a memorial to William III begging his support offered him at Paya pass, at the head of the Valley of the Paya, which empties into the Gulf of San Miguel, "the key of the two oceans, because it is at that point that they communicate." Dionisio de Alcedo, governor of Panama in 1743, wrote in his Geographical Dictionary that the Mandinga River, rising in the Chepo Mountains and emptying in Mandinga Bay, ten leagues east of Portobelo on the Atlantic, was four leagues long, and offered facility, by a tributary of the Chepo River which emptied into the Gulf of Panama, for passing from the Atlantic to the Pacific; but its navigation was prohibited under pain of death, because of its use in 1679 by pirates. The Vizcayan pilot Goyeneche called attention to the Bay of Cupica (Colombia) on the Pacific between Cape San Miguel and Cape Corrientes, not more than five or six marine leagues from the headwaters of the Napipí River, which he thought was navigable and a tributary of the Atrato, emptying into the Antilles Sea.

In 1777 the Franciscans Escalante and Antonio Vélez, who had been exploring in northern Mexico, called attention to the course of the river Bravo, or Río Grande del Norte, which emptied into the Gulf of Mexico and whose headwaters, they said, were but twelve or thirteen leagues from the Colorado, which emptied into the Gulf of California. In 1793 Sir Alexander Mackenzie, the Canadian explorer, perhaps mindful of the Northwest Passage, proposed a canal to join the headwaters of the rivers La Paz (Saskatchewan ?) and Columbia, across the ridge of the Pedregosas (Rocky) Mountains. About 1800 a barge canal was built along the lower part of the Atrato River in Colombia, but because of alternate under and over supplies of water was navigable only at two short periods each year. Fray Antonio María de Bucareli y Ursúa, 46th viceroy of New Spain from 1771 to 1779, commissioned engineers Agustín Cramer and Miguel del Corral to make a careful survey of the Isthmus from the bar of Quetzalcoalco to the roadstead of Tehuantepec to see if any river communicated with both oceans, as was reported. They found that the river Quetzalcoalco at its nearest to the south sea was twenty-six leagues from the coast; but Cramer thought it feasible to join the river Chimalpa with the river Paso by a canal through a transverse valley. The writings of Baron Friedrich Heinrich Alexander von Humboldt about 1803 and his support of the opinion of Admiral Cochrane that there was no considerable mountain range between the bay of Cupica and branches of the river

Atrato,[1] and approval of a stock company for the undertaking, revived interest in possible water routes. After 1810 the Spanish Cortes made a decree providing for a company to be formed to dig a transisthmian canal. When the provinces of Central America broke away from Spain in 1821 and formed united or independent states, British and American capital became more interested in the canal enterprise.

The republic of Colombia and the United States signed at Bogotá on October 3, 1824,[2] a treaty of amity, commerce, and navigation which provided (Article 1) for perfect peace and sincere friendship between them, (Article 2) no grant by either of any particular favor to other nations, in commerce or navigation, which should not immediately become common to the other party, (Article 3) equal rights with most favored nations, (Articles 4–30) shipping rights, protection, and civil liberties, (Article 31) the treaty to last for twelve years. In his instructions to the tardy United States commissioners to Bolívar's Congress of Panama on May 8, 1826,[3] Secretary of State Henry Clay said:

> A cut or canal for purposes of navigation somewhere through the Isthmus that connects the two Americas, to unite the Pacific and Atlantic Oceans, will form a proper subject for consideration at the Congress. . . . If the work should ever be executed so as to admit of the passage of sea vessels from ocean to ocean, the benefits ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls.

Following the Congress of Panama, at which only Colombia, Guatemala, Mexico, and Peru were represented, June 22 to July 15, 1826,[4] Bolívar commissioned Messrs. Lloyd and Falmare to explore the isthmus for a possible railroad or canal route; and after spending 1828–29 in surveys for the Republic of (Greater) Colombia, they reported in favor of a rail line across the valley of the Trinidad, a tributary of the Chagres, and thence to the shore of the Bay of Chorrera. The Republic of New Granada on May 29, 1835,[5] granted to Baron Charles de Thierry a privilege to open a canal by means of the waters of the river Grande, the river Chagres and the Bay of Limón, and Louis Philippe sent his chief engineer, Napoleon Garella, to survey the route. The concession lapsed for failure of the company to begin work within the stipulated time and a group in the United States sent Colonel Charles Biddle to Bogotá to obtain a canal concession. He joined Granadan capitalists likewise seeking the privilege of building a canal, and on June 22, 1836,[6] they obtained a concession. This also failed to result in any

[1] Henri Prudhomme, "Le canal d'Atrato," *Rev. gén. de dr. int. pub.*, XVIII (1911), 449–455.

[2] Ratifications exchanged at Washington, May 27, 1825. 8 Stat. L. 306. *Treaties of the U. S.* (Malloy, 1910), I, 292. *Trats. de Colombia* (Caracas, 1826), 58.

[3] U. S. Dept. of State. *Mss. Instructions*, XI, 35.

[4] See Sec. 4, Note 5, this chap., *supra*.

[5] *Cod. Nac.* (Bogotá, 1925), V, 481.

[6] *Cod. Nac.* (Bogotá, 1925), VI, 168, 220.

actual operations, and on June 1, 1842,[7] the Granadan Congress declared that new proposals for digging a canal should be sought at home and abroad. In 1846 the Royal Mail Steam Packet Company established a regular service of canoes and mules across the fifty miles from Colón to the Pacific.

The provisional Mexican government of General Antonio López de Santa Ana on March 1, 1842, granted to José Garay a concession to open a way of communication between the Atlantic and Pacific oceans by way of the Isthmus of Tehuantepec. After making surveys Garay undertook to transfer the concession to John Schneider & Co. of London and on January 7, 1847, to Manning & Mackintosh of Mexico and the latter to the Company of Tehuantepec of New Orleans, but the Mexican Congress under President José Joaquín de Herrera on May 22, 1851,[8] declared the whole concession invalid.

Manuel María Mallarino, Secretary of Foreign Relations of New Granada, and Benjamin A. Bidlack, United States chargé in Bogotá, signed there on December 12, 1846,[9] a treaty of peace, amity, navigation, and commerce (with an additional article) which provided:

> Art. 35. The United States of America and the Republic of New Granada, desiring to make as durable as possible the relations which are to be established between the two parties by virtue of this treaty . . . agree . . .
>
> 1st. . . . that the citizens, vessels and merchandise of the United States shall enjoy in the ports of New Granada, including those of the part of the Granadan territory generally denominated Isthmus of Panama from its southernmost extremity until the boundary of Costa Rica, all the exemptions, privileges and immunities concerning commerce and navigation, which are now or may hereafter be enjoyed by Granadan citizens, their vessels and merchandise; and that this equality of favors shall be made to extend to the passengers, correspondence and merchandise of the United States, in their transit across the said territory, from one sea to the other. [New Granada guarantees to the United States that] the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States [no tolls or charges to be levied other than those levied upon Granadan citizens under like circumstances and any merchandise passing from one sea to the other, for exportation, to be free from import duties]. And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the [shipping] favors they have acquired by the 4th, 5th and 6th articles of this treaty, the United States guarantee, positively and efficaciously, to New

[7] *Cod. Nac.* (Bogotá, 1927), IX, 390.

[8] *Memoria Instructiva . . . del Privilegio concedido a Don José Garay* (Mexico, 1852; in English, New York, 1852). *La Cuestión de Tehuantepec* (Nueva York, 1852). José F. Ramirez, *Memorias para servir a la Historia de la Comunicación Interoceánica por el Istmo de Tehuantepec* (Mexico, 1853).

[9] Ratified by New Granada, July 15, 1847; ratified by the United States, June 10, 1848; ratifications exchanged at Washington, June 10, 1848. 9 Stat. L. 881. 18 Stat. L. II, 550. *U. S. Treaty Series*, No. 54. *Treaties of the U. S.* (Malloy, 1910), I, 302. *Treaties and Other Int. Acts of the U. S.* (Miller, Washington, 1937), V, 115. *Col. de Trats. Pub. de Colombia* (Bogotá, 1883), I, 38. *Cod. Nac.* (Bogotá, 1928), XIII, 262. *Amer. J. Int. Law* (1909), III, Supp., 108. *Rec. des Cours* (1930), XXXIV, 570; (1933), XLV, 38, 55. *U. S. For. Rel.*, 1866, III, 507–598; 1881, p. 71.

Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

2nd. [This treaty to remain in force for 20 years, and the treaty of Oct. 13 (sic), 1824 between the parties to cease to have effect.]

3rd. Notwithstanding the foregoing, if neither party notifies to the other its intention of reforming any of, or all, the articles of this treaty 12 months before the expiration of the 20 years stipulated above, the said treaty shall continue binding on both parties beyond the said 20 years, until 12 months from the time that one of the parties notifies its intention of proceeding to a reform.

New Granada on June 8, 1847, approved a contract of May 10, 1847,[10] for an exclusive privilege to build a railroad across the isthmus, to the Compañía de Panama, organized in Paris. That company quickly transferred the concession to the Panama Railroad Company,[11] which built the road, and the first train crossed from Aspinwall (Colón) to Panama (City) on January 28, 1855.[12] Until 1881 that company, and from then until 1903 the Panama Railway & Steamship Company, a New Jersey corporation, paid Colombia $250,000 a year for use of the right of way across the isthmus. On January 2, 1850, in connection with the boundary controversy with Costa Rica,[13] Colombia asked the United States for a determination of the limits of the isthmus on the north and on the south to which protection under Article 35 of the treaty of December 12, 1846, was to be extended. Secretary of State John M. Clayton replied on January 29[14] that the limits of the Isthmus of Panama were believed to be defined with sufficient precision by the words of Article 35 itself; that the southern extremity, being within the exclusive jurisdiction of New Granada, presented a municipal question; and that the United States was not aware that the boundary with Costa Rica was unsettled. A decree of June 18, 1851,[15] granted to Manuel Cárdenas and Florentino González the privilege of excavating a canal within the zone from the mouth of the Atrato to one league above the confluence of the Napipí on the Atlantic and between the 8th parallel and the point of San Francisco Solano on the Pacific. Another decree of the same date granted to Ricardo de la Parra and Benjamin Blagge[16] the right to connect the Atrato and San Juan rivers between the 5th

[10] *Cod. Nac.* (Bogotá, 1928), XII, 192.

[11] Incorporated, April 7, 1849, by William Henry Aspinwall, John Lloyd Stephens, Henry Chauncey and ten other United States citizens. N. Y. Laws of 1849, Chap. 284, p. 407 Approved by Colombia, Decree of June 4, 1850. *Cod. Nac.* (Bogotá, 1928), XIII, 507; (1929), XIV, 112. 70 *British and Foreign State Papers* 534.

[12] 42 *British and Foreign State Papers* 1187–1205, 1333–1358.

[13] See Sec. 2, this chap., *supra*.

[14] *Dipl. Corr. of the U. S.* (Manning, Washington, 1935), V, 365, 653.

[15] *Cod. Nac.* (Bogotá, 1929), XIV, 593.

[16] *Cod. Nac.* (Bogotá, 1929), XIV, 604. 41 *British and Foreign State Papers* 1122.

and 6th parallels. A law of June 1, 1852,[17] granted to Patrick Wilson, Edward Cullen, Charles Fox, John Henderson, and Thomas Brassey the right to construct a canal between the Gulf of San Miguel and the Bay of Caledonia. A law of April 28, 1855,[18] granted to Joseph Gooding and Ricardo Vanegas the privilege of excavating a canal between the 4th and 8th parallels. On January 25, 1865, the Colombian government made a contract for the excavation of a canal with Henry Duesbury, represented by Eustacio de la Torre Narváez, which the Colombian Congress disapproved on June 27, 1866,[19] in a law laying down the fundamental requisites for a canal concession. On September 7, 1867, Messrs. Roehn (a naturalist resident in Darién), Ragon, and Chevey submitted a proposal which was rejected as not in conformity with the basic law. Other proposals followed, from Page, Kepply and Company; Puydt; Ayrian; Count Gleichen, with the marked support of Lord Clarendon of England, and others. On January 14, 1869,[20] Drs. Miguel Samper and Tomás Cuenca for Colombia signed with Peter J. Sullivan, United States minister at Bogotá, a treaty for the excavation of a canal across the Isthmus of Panama and Darién; but the agreement was disapproved by the Colombian Congress. On March 29, 1869, the government of Peru offered to subscribe a substantial amount to the support of any reliable canal enterprise. On January 26, 1870,[21] Drs. Justo Arosemena and Jacobo Sánchez for Colombia signed with Stephen A. Hurlbut, United States minister at Bogotá, a new canal treaty which was approved with amendments by the Colombian Congress on July 8, 1870,[22] but which failed of approval in the United States Senate in time for ratifications to be exchanged within the specified period.

Colombia, which had taken no active steps on its own behalf since the Bolívar survey of 1828–29, appointed a legislative commission for which J. M. Quijano Otero reported on April 1, 1875,[23] in favor of the canal project; and on May 26, 1876,[24] the Colombian Congress passed a law specifying the conditions on which the executive might treat with any individual or company desiring to build a sea level canal across the isthmus. On May 26, 1876, the Colombian foreign minister, Dr. Manuel Ancizar, signed with General Etienne Türr, representing French capitalists, a contract which did not go into effect, but which was replaced by a ninety-

[17] *Cod. Nac.* (Bogotá, 1929), XV, 156. 51 *British and Foreign State Papers* 1238.

[18] *Cod. Nac.* (Bogotá, 1929), XVI, 147. 51 *British and Foreign State Papers* 1109.

[19] Law 60. *Cod. Nac.* (Bogotá, 1932), XXII, 374. *U. S. For. Rel.*, 1867, II, 823.

[20] Rep. of Sec. of State Evarts (Washington, March 9, 1880), S. Ex. Doc. 112, IV, Ser. 1885, 46th Cong., 2d Sess., 34. *Arch. Dipl.*, 2e Sér. (1882–83), V, 199–242; (1889), XXIX, I, 74, 238.

[21] Evarts, *op. cit.*, note 19 *supra*, 38. *U. S. For. Rel.*, 1873, II, 760; 1876, pp. 76–93. *Arch. Dipl.* (1874), XIV, IV, 122. *Rev. de dr. int. et de lég. comp.*, I (1869), 458; II (1870), 322.

[22] Law 97. *Const. i Leyes de Colombia, 1863 a 1875* (Bogotá, 1875), 704.

[23] 67 *British and Foreign State Papers* 1315. D. B. Novoa Zerda, "Canales Interoceánicos de Colombia" (Madrid, 1906), *Bol. de la Real Soc. Geog.*, XLVIII, 540–557.

[24] Law 33. *Leyes de Colombia de 1876* (Bogotá, 1876), 31. 68 *British and Foreign State Papers* 433.

nine-year one of March 23, 1878,[25] signed by Foreign Minister General Eustorgio Salgar with Lieutenant Lucien Napoleon Bonaparte Wyse (head of the Scientific Isthmian Exploration Commission of 1876–78), representing the Société civile internationale du canal interoceánique de l'isthme de Panama. All of the schemes and proposals down to this time had remained on paper. In May 1879 an international congress of 136 delegates, with two from the United States, including many eminent engineers, met at Paris, under the presidency of Admiral Ronciere Le Noury and inspired chiefly by Ferdinand de Lesseps, who had successfully completed the Suez Canal in 1869, to consider the various routes for an interoceanic American canal. Fourteen projects were presented, and after a two weeks' session the Congress approved the plan of Messrs. Wyse, Reclus, and Pedro J. Sosa, for a uniform level canal for the Gulf of Limón to the Bay of Panama. The Société thereupon bought the Wyse concession for 10,000,000 francs and set about the construction of a sea-level canal, with a draught of twenty-nine and one half feet, at an estimated cost of 658,000,000 francs. The Société bought machinery and transported it to the isthmus, set up offices there on February 1, 1880, transported and hired laborers, made surveys and actually began digging, mainly in the Culebra Cut, from January 26, 1882, to February 4, 1889, but found from the outset that the costs were greater and the inroads of yellow fever and malaria [26] more terrible than had been anticipated. Plans were changed to a canal with locks 65 feet wide and 590 feet long; Culebra Cut was to be 72 feet wide. In August 1881 the Société bought all the property and rights of the Panama Railroad Company for $25,500,000, and incorporated an operating company in New Jersey. The Costa Rica–Nicaragua Treaty of January 19, 1884, and the Frelinghuysen-Zavala Treaty of December 1, 1884,[27] between Nicaragua and the United States, even though the latter was not ratified, did not help popular belief in the ultimate success of the Panama route, and subscriptions of new money for the Société dwindled almost to the vanishing point. In December 1888 the Société, after having raised and spent some $260,000,000, made application to a French court for the appointment of provisional administrators, and on February 4, 1889,[28] the Tribunal Civil de la Seine ordered the dissolution and

[25] Approved with amendments by Law 28 of May 18, 1878; extended for ten years by a new contract of Dec. 10, 1890, with the Liquidator in favor of a new company to be organized and to renew the work of excavation before Feb. 28, 1893, approved by Law 107 of Dec. 26, 1890; government authorized to extend at its discretion by Law 91 of Dec. 6, 1892; 10 years granted in 1890 to begin not later than Oct. 31, 1894, by new contract of April 4, 1893; and by Legislative Decree of Oct. 23, 1900. *Leyes de Colombia* (Bogotá, 1878), 43; (1890), 331; (1892), 131. *U. S. For. Rel.*, 1879, pp. 243–303; 1880, pp. 385–386; 1881, pp. 71, 352, 388, 440, 537, 549–569, 1066; 1883, pp. 217–223; 1884, pp. 119–124; 1885, pp. 198–282; 1887, p. 82. 68 *British and Foreign State Papers* 438; 70 *ibid.* 694, 1200; 71 *ibid.* 711.

[26] The French in nine years lost by yellow fever, malaria, and dysentery 22,189 laborers out of 110,000; the United States in ten years from all causes 6,630 out of 39,000.

[27] See Sec. 13, this chap., *supra*.

[28] Order modified March 8, 1889 by the Cours d'Appel de Paris. Dalloz (1890), 2, 233. Sirey (1889), 2, 225. *Canal Interoceánico* (Bogotá, 1890). 83 *British and Foreign State Papers* 1258.

liquidation of the company. The receiver continued operations until May 15, 1889, when all work was suspended for lack of funds. In November 1892 some of the leaders of the Conservative party in France accused the Panama Canal Company of having in 1888 bribed a Leftist cabinet minister and several deputies, with Cornelius Herz as a go-between, to obtain permission to issue additional shares of stock. The scandal was played up in the French press, resulting in a series of denunciations, inquiries, and judicial prosecutions, and in the defeat in 1893 of several leaders of the Left, including M. Georges Clemenceau and M. Charles Thomas Floquet, president of the Chamber of Deputies, and their temporary retirement from public life. De Lesseps was not the man to be discouraged at the first failure, although the continuing likelihood of the United States building a canal through the Nicaraguan route made financing difficult, and on October 20, 1894, there was organized La Compagnie nouvelle du canal de Panama which bought the concession and all the tangible property and other assets of the original Société. The new company apparently never intended to dig, but contented itself with obtaining from Colombia on April 23, 1900, an extension of the concession to October 31, 1910,[29] and with trying to induce France or the United States to take over the job and purchase all the property. After the end of the Spanish-American War, President William McKinley on June 10, 1899,[30] organized the Isthmian Canal Commission to investigate routes and costs, but he died on September 14, 1901, before anything more had been done. Colombia conceived the idea of getting Spain and perhaps other European countries to try to induce Great Britain to protest, under the Clayton-Bulwer Treaty, to the United States against their exclusive activities in Central America; but France, especially, because of the French interests in Panama, was cool to the plan of taking part in any action directed against the United States.[31]

The presidency fell upon Theodore Roosevelt, whose previous speeches and public acts gave assurance that he warmly supported and would seek real action toward the construction of an isthmian canal at the earliest possible moment. The Isthmian Canal Commission reported on November 6, 1901,[32] recommending the Panama route, and estimating the value of the rights and property of the new Panama Canal Company at $40,000,000, although the Company had generously offered to the commission to sell everything it owned to the United States for $109,141,500. The next step was the clearing away of any rights which Great

[29] Decree 721 of April 23, 1900. *Decrs. Leg. 1899-1902* (Bogotá, 1902), 61. *La Prorroga de 1900* (Bogotá, 1910).

[30] Act of March 3, 1899, c. 424, secs. 3–6. 30 Stat. L. 1074 at 1150. *Messages and Papers of the Presidents* (Richardson), XIV, 6366.

[31] *Doc. Dipl. Fr.*, 2e Sér. (Paris, 1930), I, 476, 680. Antonio José Restrepo, *Al Pueblo Colombiano* (Madrid, 1902). Cf. *U. S. For. Rel.*, 1881, pp. 356–388.

[32] *Report of the Isthmian Canal Commission, 1899–1901* (Washington, 1904).

Britain might claim under the Clayton-Bulwer Treaty of April 19, 1850, and this was accomplished by the (second) Hay-Pauncefote Treaty, signed on November 18, 1901, the ratifications of which were exchanged at Washington on February 21, 1902.[33] The non-operating French company engaged the services of William Nelson Cromwell,[34] one of the most astute members of the New York City bar; and following negotiations by him with the officials in Washington, the French company offered to sell all its rights under the canal concession, the machinery and property as it stood, and its 68,863 shares of stock of the Panama Railroad Company, of which Mr. Cromwell was general counsel and a director, to the United States for $40,000,000. Congress approved this figure in the Isthmian Canal Act,[35] which provided:

Sec. 1. That the President of the United States is hereby authorized to acquire, for and on behalf of the United States, at a cost not exceeding $40,000,000, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records, on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than 68,863 shares of the Panama Railroad Company, owned by or held for the use of said canal company, provided a satisfactory title to all of said property can be obtained.

Sec. 2. That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, [and the right to use and dispose of the waters thereon and to construct, operate and protect thereon a canal of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, with the right to maintain and operate the Panama Railroad; and such additional territory and rights as in the President's judgment will facilitate this general purpose].

Sec. 3. [When satisfactory title from the Company and control from Colombia are secured and paid for, the President shall through the Isthmian Canal Commission cause to be constructed], utilizing to that end as far as practicable, the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship canal from the Caribbean Sea to the Pacific Ocean.

Sec. 4. [Should the President be unable to obtain satisfactory title and control as above within a reasonable time and upon reasonable terms, he shall, having first obtained perpetual control of the necessary territory from Costa Rica and Nicaragua, construct a ship canal by the Nicaragua route from Greytown by way of Lake Nicaragua to a point near Brito on the Pacific.]

Sec. 5. [Ten million dollars is appropriated toward the project; and contracts are au-

[33] See Sec. 13, this chap., *supra*.

[34] Born 1854. Columbia LL.B. 1876.

[35] H. R. 3110, replaced, June 18, 1902, by total amendment of Senator John C. Spooner of Wisconsin. Act of June 28, 1902, c. 1302. 32 Stat. L. 481. Constitutional: Wilson *v* Shaw (1907), 204 U. S. 24, 27 S. Ct. 233, 51 L. Ed. 351; affirming (1905), 25 App. D. C. 510. Charles H. Huberich, *The Trans. Isthmian Canal* (Austin, Tex., 1904).

thorized up to an additional aggregate of $135,000,000 for the Panama route or $180,000,000 for the Nicaragua route.]

Sec. 6. [The President may guarantee to Colombia or Nicaragua and Costa Rica use of the canal and harbors on terms to be agreed upon.]

Sec. 7. [The Isthmian Canal Commission is created, of 7 members to be appointed by the President, with the advice and consent of the Senate, to construct the canal.]

Sec. 8. [The Secretary of the Treasury may borrow up to $130,000,000 on 30 year 2% tax exempt bonds, for expenditures under this act.]

Negotiations had been begun in April 1901, in Washington between Rear Admiral John G. Walker, retired, president, and ex-Senator Samuel Pasco of Florida, a member, of the Isthmian Canal Commission, and Colombian Minister Dr. Carlos Martínez Silva, succeeded on March 8, 1902, by Dr. José Vicente Concha, as to the principal points to be agreed on. After numerous proposals and modifications Secretary of State John Hay signed with Tomás Herrán, Colombian special minister, at Washington on January 22, 1903,[36] a convention which provided:

Art. 1. [Colombia authorizes the New Panama Canal Company to transfer to the United States all its rights, property and concessions, including the Panama Railroad.]

Art. 2. [The United States shall have the exclusive right for 100 years, renewable at the sole option of the United States for equal periods, to construct a maritime canal across Colombian territory.]

Art. 3. [Colombia grants to the United States for 100 years, equally renewable, a zone of land along the canal 5 kilometers (3.1 miles) wide on each side of the channel, with necessary auxiliary canals not over 15 miles long; at least 3 marine miles from the point of low tide at each end of the canal; and the small islands of Perico, Naos, Culebra and Flamenco in the bay of Panama; and the United States is to continue to guarantee the neutrality and sovereignty of Colombia as under Article 35 of the treaty of 1846.]

Art. 4. The rights and privileges granted to the United States by the terms of this Convention shall not affect the sovereignty of the Republic of Colombia over the territory within whose boundaries such rights and privileges are to be exercised. The Government of the United States recognizes this sovereignty as a whole and disavows any intention to diminish it in any manner, or to increase their territory at the expense of Colombia or of any of the sister Republics of Central or South America; since they desire, on the contrary, to strengthen the power of the Republics on this Continent and to promote, develop and preserve their prosperity and independence.

Art. 5. [Colombia authorizes the United States to construct and maintain a port at each end of the canal.]

Art. 6. [Colombia undertakes not to grant or lease to any foreign Government any of the islands or ports within the bay of Panama or in adjacent places, nor on the Colombian Atlantic coast between the river Atrato and the western boundary of the Department of Panama.]

[36] Approved by United States Senate, March 17, 1903, by vote of 73 to 3. *Cong. Rec.*, 58th Cong., Spec. Sess., XXXVII, 3, 67, 106, 140. Antonio R. Blanco, *Canal* (Cartagena, 1903).

Art. 7. [Colombia includes in the concession general use of the waters of the river Chagres and other non-navigable streams and lakes.]

Art. 8. [Colombia declares free forever the ports at either end of the canal.]

Art. 13. [The United States shall have authority to protect and give security to the canal, railroads and other auxiliary works and dependencies, to preserve order and public health and safety.]

Art. 16. [The canal when completed and its entrances shall be forever neutral and open, in conformity with the provisions of the treaty of Nov. 18, 1901 between the United States and Great Britain.]

Art. 21. [Any claim in respect of any previous concession or privilege shall be taken care of by Colombia, and not be valid against the United States.]

Art. 24. [The United States promises to complete the preliminary works as soon as possible, to begin the actual work within 2 years, and to complete the canal within 12 years thereafter; or, if it decides to build a sea level canal, within 10 years more.]

Art. 25. [The United States will pay $10,000,000 on exchange of ratifications, and from the ninth year thereafter $250,000 annually.]

José Manuel Marroquín, vice president of Colombia charged with the executive power, called the Colombian Congress in special session on June 20, 1903, to consider the convention, which he submitted with a message declaring it a propitious solution of the long-discussed and difficult question and an indisputable diplomatic triumph for Colombia. On June 13, 1903, Philippe Bunau Varilla cabled from Paris to President Marroquín that failure by the Colombian Congress to ratify the treaty would mean either construction of a Nicaragua canal and absolute loss to Colombia of incalculable advantages or construction of a Panama canal after secession and declaration of independence of the Isthmus of Panama under protection of the United States. Just before the assembling of the Colombian Congress, the United States suggested to Colombia that she apparently did not appreciate the gravity of the situation,[37] and that if the treaty were rejected or its ratification unduly delayed the friendly relations between the two nations might be so seriously affected that the United States Congress would the following winter take steps which every friend of Colombia could but regret. The Senate committee on August 4 recommended various modifications, whereupon the United States notified Colombia that no modifications would be accepted.

[37] *Canal de Panama, Documentos* (Bogotá, 1903). *U. S. For. Rel.*, 1903, pp. 132–349. Lorenzo Marroquín, *El Canal* (Bogotá, 1903). Ramón M. Valdés, *La Independencia del Istmo de Panama* (Panama, 1903; in French, Panama, 1904). Achille Viallate, "Les États Unis et le Canal Interocéanique" (1903), *Rev. gén. de dr. int. pub.*, X, 5–65; XI, 481–514. Abelardo Aldana, *The Panama Canal Question, A Plea for Colombia* (New York, 1904). José Vicente Concha, *Las Negociaciones Diplomaticas del Canal de Panamá* (Bogotá, 1904). Salvador Diego-Fernandez, *La Independencia de Panamá* (Mejico, 1904). Alberto Leduc, *Colombia, Estados Unidos y Canal de Panamá* (Mexico, 1904). Moorfield Storey, *The Recognition of Panama* (Boston, 1904). Colombiano; *Colombia, Estados Unidos y Panamá* (Buenos Aires, 1906). Gutiérrez Sobral, *Canal de Panamá* (Madrid, 1908). Pedro Velez R., *Asuntos de Panamá* (Bogotá, 1909). Colby M. Chester, "Diplomacy of the Quarter Deck," *Amer. J. Int. Law*, VIII (1914), 443–476. Norman H. Davis, *For. Aff.*, IX (1931), 556. Ernesto J. Castillero R., *La Causa Inmediata de la Emancipación de Panamá* (Panama, 1933).

After a warm debate, which appeared to touch every possible aspect of form and substance, the Colombian Senate on August 12, 1903, rejected the convention unanimously, by twenty-four votes, and adjourned on October 31, 1903, without again considering it.

President Theodore Roosevelt had decided that a canal was to be built by the United States and that rights for it must somehow be obtained immediately; and he was so upset by the rejection of the Hay-Herrán Convention after the government had been explicitly warned of the consequences that he determined to have no more dealings with Colombia. There followed the uprising in Panama City on November 3, 1903, the proclaiming of the Republic of Panama, and its formal recognition by the United States on November 13, 1903, as described hereinafter. Recognition by sixteen other nations followed before December 31, 1903.[38] Colombia, of course, felt deeply aggrieved, and addressed a long protest to the United States on April 12, 1904,[39] and to other nations.[40] On October 21, 1905, Diego Mendoza Pérez, Colombian minister in Washington, presented to the State Department a recapitulation of the events preceding the rebellion in November 1903 and asked for a direct adjustment or arbitration of the question whether the United States was under obligation by the Treaty of 1846 or by principles of international law not to do things which it admittedly had done; but Secretary of State Root replied on February 10, 1906,[41] that the government of the United States was not

> willing to permit any arbitrator to determine the political policy of the United States in following its sense of right and justice by espousing the cause of this weak people against the stronger Government of Colombia, which had so long held them in lawful subjection.

Some compunction at the methods of obtaining the Panama Canal treaty seemed to be felt in the United States; and even before President Roosevelt left office, Secretary of War William H. Taft and Enrique Cortés, Colombian minister, signed with José Agustín Arango, minister of Panama, in Washington on August 17, 1907, protocols for treaties between the United States and Panama and between Colombia and Panama, which met with substantial objection and proposals for material alterations when they were submitted to the government at Bogotá. Secretary of State Elihu Root, who had made numerous speeches defending the President's course and asserting the friendliness of the United States with all the American republics, signed with Minister Cortés in Washington on

[38] *Rev. gén. de dr. int. pub.*, XI (1904), 600.

[39] *El Derecho de Colombia ante el Derecho Internacional, Notas Diplomáticas* (Guayaquil, 1903). *Protesta de Colombia* (Bogotá, 1904). *Notes Diplomatiques sur la Rébellion de Panama* (Paris, 1904). Gaston Brunet, *Le Procès de Panama* (Paris, 1904).

[40] *Rev. gén. de dr. int. pub.*, X (1903), 5–65; XI (1904), 481–514, 567–615.

[41] *U. S. For. Rel.*, 1903, pp. 213–230; 1906, I, 412–421.

January 9, 1909,[42] a treaty which provided: that (Article 1) there should be inviolable peace and sincere friendship between Colombia and the United States, that (Article 2) Colombia should have free use of the Panama Canal for troops and warships, and, during the construction of the canal, of the railroad between Ancón and Cristóbal, (Article 3) entry of produce into the Canal zone with equal duties as produce of the United States, (Article 4) transportation of mails on the same basis; that there should be (Article 5) recognition by the United States of the transfer by Panama to Colombia of the first ten annual rental payments of $250,000 each on the Canal and release of Panama from all obligations to pay any part of the interior or exterior debt of Colombia, (Article 6) a grant to the United States of free use of all Colombian open ports as harbors of refuge, and renunciation of all right or interest by Colombia in any isthmian canal or railroad concession, (Article 7) a revision of the treaty of December 12, 1846, to be negotiated, and (Article 8) this treaty to have no effect unless the Colombia–Panama and United States–Panama treaties of the same date should go into effect. Also on January 9, 1909, Minister Cortés of Colombia signed with Carlos Constantino Arosemena, minister of Panama, at Washington a treaty [43] which provided that (Article 1) Colombia recognized the independence of Panama and its existence as an independent sovereign nation, that (Article 2) there should be inviolable peace and friendship between Colombia and Panama, that (Article 3) Panama should transfer to Colombia the first ten annual payments of $250,000 each due from the United States each February 26 from 1908 to 1917, inclusive, and that Colombia agreed that Panama had no responsibility for any part or expense of the exterior or interior debt of Colombia, that (Article 4) there should be mutual forgiveness of all national pecuniary claims which either had against the other on November 3, 1903, that (Article 5) Panama recognized that she had no title to the fifty thousand shares of capital stock of the New Panama Canal Company which appeared in the name of Colombia on the books of the company in Paris and would discontinue her suit for them in French courts, that (Article 6) citizens of either should have the rights of citizens of the most favored nation in the other and that residents of Panama born there or in Colombia before November 3, 1903, might within one year choose to be citizens of Colombia or of Panama, that (Article 7) neither republic would admit to form part of it any portion of the territory of the other separated by force, that (Article 8) additional treaties of commerce, mails and telegraphs, literary and artistic property, consular relations, arbitration, extradition of criminals, and other similar matters were to be ne-

[42] *U. S. For. Rel.*, 1909, pp. 226–229; 1910, pp. 361–408; 1911, p. 88; 1913, pp. 284–329.

[43] See Sec. 14, this chap., *supra*.

gotiated. Article 9 described the boundary line between Colombia and Panama, with arbitration for the Juradó region, and Article 10 provided that the treaty was not to have any effect unless the Colombia–United States and Panama–United States treaties of the same day should go into effect.

General Rafael Reyes, president of Colombia, in a special message submitted these treaties with a report by Foreign Minister Francisco José Urrutia,[44] to the Colombian National Assembly on February 22, 1909, but they met strong opposition in and out of the Assembly and played an important part in General Reyes' fall. His temporary successor, General Jorge Holguín, on assuming the presidency on March 13, 1909, at once withdrew both treaties from the National Assembly by a special message, and on July 20, 1909, informed the Assembly that the government had decided to postpone further consideration of them until the 1910 session.[45] In February 1913 James T. Du Bois, United States minister at Bogotá, on instructions of Secretary of State Philander C. Knox, under President William H. Taft, presented to the Colombian foreign minister a memorandum for direct settlement of the pending questions, but it did not meet official desires nor public opinion, and the government of President Carlos E. Restrepo rejected it.

President Woodrow Wilson sent as minister to Colombia on June 10, 1913, Thaddeus A. Thomson, with instructions from Secretary of State William J. Bryan favorable to an adjustment of the problem; and on October 1, 1913, he offered on behalf of the United States the sum of $20,000,000 for the complete release of all claims and settlement of pending difficulties. Negotiations were at once opened by Foreign Minister Urrutia and the departmental advisory committee, and after protracted conferences there was signed at Bogotá on April 6, 1914,[46] a treaty which provided:

> Art. 1. The Government of the United States of America, desirous of putting an end to all the controversies and differences with the Republic of Colombia arising from the events which originated the present situation on the Isthmus of Panama, in its own name and in the name of the people of the United States expresses sincere regret for anything which may have occurred to interrupt or to alter the relations of cordial friendship which for so long a time existed between the two nations. The Government of the Republic of Colombia, in its own name and in the name of the Colombian people, accepts this declaration, in the full assurance that thus will disappear every obstacle to the reëstablishment of a complete harmony between the two countries.

[44] The Special Committee to which they were referred reported 17 to 1, on March 8, 1909, in agreement with the government in favor of the treaties.

[45] *Diplomatic History of the Panama Canal* (Washington, 1914), S. Doc. 474, XV, Ser. 6582, 63d Cong., 2d Sess. (April 29, 1914). *Panamá, Comienza la Reparación* (Bogotá, 1911).

[46] Signed by Francisco José Urrutia, foreign minister, Marco Fidel Suárez, first designate (for the executive power), Nicolás Esquerra, ex-minister, José María González Valencia, senator, Rafael Uribe Uribe, senator, and Antonio José Uribe, president of the House of Representatives, for Colombia; and by Thaddeus Austin Thomson, minister, for the United States.

Art. 2. The Republic of Colombia shall enjoy the following rights with respect to the interoceanic Canal and the railroad of Panama:

(1) The Republic of Colombia shall be at liberty at all times to transport through the interoceanic Canal its troops, materials of war and ships of war, even in case of war between Colombia and another country, without paying any charges to the United States.

(4) During the construction of the interoceanic Canal and afterwards [when canal traffic is interrupted, troops, war materials, produce and mails of Colombia] shall be transported even in case of war between Colombia and another country (by railroad on the same terms as for the United States).

(5) Coal, petroleum and salt, products of Colombia, to pass from Colombian coast port to coast port, to be transported over the railroad free of any freight charge above actual cost and not over $\frac{1}{2}$ of ordinary charges to similar United States products.

Art. 3. The United States of America agrees to pay to the Republic of Colombia, within six months following the exchange of ratifications of this Treaty, the sum of $25,000,000 gold, in United States money.

Art. 4. The Republic of Colombia recognizes Panama as an independent nation and agrees that the boundaries between the two States shall be [as described]. In consideration of this recognition the Government of the United States [will take steps to get Panama to send an agent to conclude with Colombia a treaty of peace and friendship, to establish regular diplomatic relations, and settle all pecuniary obligations].

Art. 5. [This treaty shall be approved and ratified by the parties according to their laws and ratifications shall be exchanged at Bogotá as soon as possible.]

The Colombian Senate and House ardently discussed this treaty from May 1 to June 9, 1914,[47] when it was finally approved. President Wilson tried earnestly for the remaining seven years of his terms [48] to secure the approval of the United States Senate, but was thwarted by the Republican minority, warmly supported, of course, by ex-President Theodore Roosevelt until his death on January 6, 1919. They demanded that any expression of regret be stricken out and succeeded in avoiding action until after the inauguration of a Republican president, Warren G. Harding, on March 4, 1921. After numerous and bitter debates, the United States Senate, having considered the treaty in open session since April 12, by a vote of 69 to 19 finally approved it on April 20, 1921,[49] with eleven amendments, in substance to:

(1) Strike out Article 1 and renumber Articles 2–5 to be Articles 1–4.

(2) In new Article 1, after reference to the canal and railroad add, "the title to which is

[47] *U. S. For. Rel.*, 1914, pp. 146–169; 1915, pp. 259–263; 1916, pp. 211–216; 1917, pp. 292–300; 1919, I, 726–763; 1920, I, 823–827. Carlos José Espinosa, Inconstitucionalidad del Tratado (Bogotá, 1914). Vicente Olarte Camacho, *Tratado de 6 de abril* (Bogotá, 1914). Francisco José Urrutia, *A Commentary on the Declaration on the Rights of Nations* (Washington, 1916; in Spanish, Bogotá, 1917). *Rec. des Cours*, XXXII, (1930), 775.

[48] See, especially, letter of Feb. 18, 1915, to Minister Thomson; letter of March 1, 1917, to Senator Stone; sixth annual message, Dec. 2, 1918. *Messages and Papers of Woodrow Wilson* (New York, 1924), I, 559 at 564. *U. S. For. Rel.*, "The Lansing Papers" (1940), II, 512–517.

[49] Cong. Rec., 63d Cong., 2d Sess., LI, XIII, 12707; 65th Cong., 2d Sess., LVI, VIII, 7484–88; 66th Cong., 3d Sess., LX, I, 360; 67th Cong., 1st Sess., LXI, I, 157–168, 191–202, 226–248, 305–316, 369–373, 387–396, 433–450, 465–488. *Amer. J. Int. Law*, XV (1921), 430. *For. Aff.*, II (1924), 526. *U. S. For. Rel.*, 1921, I, 638–645.

now vested entirely and absolutely in the United States of America, without any incumbrances or indemnities whatever."

(3) In new Article 1, Subds. 1 and 4, granting free transport of troops and warships, strike out the words "even in case of war between Colombia and another country."

(4) In new Article 1, Subd. 4, for passage by railroad, strike out the words "during the construction of the interoceanic canal."

(5) In new Article 1, Subd. 5, for free passage of coal, petroleum, and salt, add "for Colombian consumption" and "whenever traffic by the canal is interrupted."

(6) In new Article 2, add at the beginning, "The Government of," and change the payment to be made "in Washington" and "$5,000,000 within 6 months after the exchange of ratifications and thereafter $20,000,000 in four annual instalments of $5,000,000 each."

These amendments were accepted by Colombia on December 24, 1921,[50] and the treaty of April 6, 1914,[51] went into effect on March 1, 1922, providing:

Art. 1. The Republic of Colombia shall enjoy the following rights in respect to the interoceanic Canal and the Panama Railway, the title to which is now vested entirely and absolutely in the United States of America, without any incumbrances or indemnities whatever:

(1) The Republic of Colombia shall be at liberty at all times to transport through the interoceanic Canal its troops, materials of war and ships of war, without paying any charges to the United States; except [as agreed to further on the exchange of ratifications], the provisions of this section are not to apply in case of war between Colombia and any other country.

(2) [Produce and mails to pass through the Canal on same charges only as those of the United States; and produce of soil to enter Canal Zone on same terms.]

(3) [Colombian citizens crossing the Canal Zone to be exempt from any toll tax or duty to which United States citizens are not subject.]

(4) [When canal traffic is interrupted troops, war materials, produce and mails to be transported on the railroad on the same terms as for the United States.]

(5) Coal, petroleum and salt, products of Colombia, for Colombian consumption, to pass from Colombian coast port to coast port, whenever traffic by the canal is interrupted, to be transported over the railroad free of any freight charge above actual cost and not over $\frac{1}{2}$ of ordinary charges to similar United States products.

Art. 2. The Government of the United States of America agrees to pay at the City of Washington to the Republic of Colombia the sum of twenty-five million dollars, gold, United States money, as follows: The sum of five million dollars shall be paid within six months after the exchange of ratifications of the present treaty, and reckoning from the date of that payment, the remaining twenty million dollars shall be paid in four annual installments of five million dollars each.

[50] Law 56 of Dec. 24, 1921. *Leyes de 1921* (Bogotá, 1921), 98. *Informe de la Com. de Rels. Ext. del Senado* (Bogotá, 1921). Antonio José Uribe, *Las Modificaciones al Tratado* (Bogotá, 1921).

[51] Ratified by Colombia (Law 14), June 9, 1914; modified (Law 56), Dec. 24, 1921; decree, March 1, 1922; ratified by the United States, Jan. 11, 1922; ratifications exchanged at Bogotá, March 1, 1922. 42 Stat. L. II, 2122. *U. S. Treaty Series*, No. 661. *Treaties of the U. S.* (Malloy, 1923), III, 2538. *Leyes de Colombia* (Bogotá, 1914), 24; (1921), 98. *Informe del Ministro de Rels. Ext. al Congreso* (Bogotá, 1922), 28–32. 114 *British and Foreign State Papers* 678. Antonio José Uribe, *Colombia y Los Estados Unidos de América* (Bogotá, 1931). *Amer. J. Int. Law*, XV (1921), 430; XVI (1922), Supp., 119. *Rev. de Der. Int.* (Habana, 1922), II, 377. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XII (1924), 131.

Art. 3. The Republic of Colombia recognizes Panama as an independent nation and taking as a basis the Colombian Law of June 9, 1855, agrees that the boundary shall be [as described].

In consideration of this recognition, the Government of the United States will, immediately after the exchange of the ratifications of the present Treaty, take the necessary steps in order to obtain from the Government of Panama the despatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship, with a view to bring about both the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all questions of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents.

Art. 4. [This treaty shall be approved and ratified by the parties according to their laws and ratifications shall be exchanged at Bogotá as soon as possible.]

The money was paid in five instalments as agreed, the last on September 2, 1926. Relations between Colombia and the United States have gradually resumed their normal uneven course.[52] Except for the minor question of title to Roncador, Quitasueño,[53] and Serrana [54] Islands, as to which the *status quo* has been slumbering peacefully since 1928, there seems to be no territorial issue at present unsettled or likely to arise between the two countries.

B. Panama–United States

Soon after the rejection by the Colombian Senate of the Hay-Herrán Convention on August 12, 1903, there began to be heard in Washington rumors that rights to dig a Panama canal might be obtained by other means than further applications to Colombia. As early as 1899 there appear to have been at work in the United States two definite forces on behalf of a Panama canal to be built by the United States government: William Nelson Cromwell, representing the New Panama Canal Company, and Philippe Jean Bunau Varilla,[55] French scientist and army colonel, chief engineer in 1885 of the original Panama Canal Company, but afterwards fallen out with and hostile to the management of the new com-

[52] *Canal Interoceánico, Informes y Projectos . . . de la Com. Especial* (Bogotá, 1890). Nicolaas Charles de Gijselaar, *Het Panama-Kanaal* (Leiden, 1891). Antonio S. de Bustamante, "Le Canal de Panama et le Droit Int.," *Rev. de dr. int. et de lég. comp.*, XXVII (1895), 112–142, 223–253. Charles Herbert Stockton, "The American Interoceanic Canal," *Proc. U. S. Naval Inst.*, XXV (1899), 753. William C. Dennis, "The Panama Situation," *Am. Law Reg.*, LII (1904), 265–306. Paul Müller-Heymer, *Der Panamakanal in der Politik der Vereinigten Staaten* (Berlin, 1909). Harmodio Arias, *The Panama Canal* (London, 1911). F. Carrera Justiz, *Orientaciones Necesarias, Cuba y Panama* (Habana, 1911). Waldemar C. A. Beck, *Der Panamakanal und die internationale Schiffahrt* (Stuttgart, 1911). "The Panama Canal and our Relations with Colombia," S. Doc. 471, XXVII, Ser. 6594, 63d Cong., 2d Sess. (Washington, 1914). James T. Du Bois, *Colombia's Claims and Rights* (Penn., 1914). Hannis Taylor, *Why the Pending Treaty with Colombia Should be Ratified* (Washington, 1914). Manuel Dávila Florés, *Discursos sobre el Tratado con los Estados Unidos* (Sincelejo, 1915). Norman Thomson, *Colombia and the United States* (London, 1915). Arsenio Roa y Uriarte, *El Canal de Panama y el Derecho Internacional* (Habana, 1926). Hugh G. Miller, *The Isthmian Highway* (New York, 1929). John F. Stevens, "Is a Second Canal Necessary?" *For. Aff.*, VIII (1930), 417–429. E. Taylor Parks, *Colombia and the United States, 1765–1934* (Durham, 1935). Dwight C. Miner, *The Fight for the Panama Route* (New York, 1940).

[53] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 267.

[54] See Chap. II, Sec. 13, *infra*.

[55] Born, July 25, 1859; died, May 18, 1940 in Paris.

pany. Dr. Manuel Amador Guerrero, a physician on the canal in 1886 and a politician in Panama, had for some time cherished the idea of a possible rebellion and secession of the state from Colombia, and in New York from time to time sought the support of Mr. Cromwell. Senator Marcus A. Hanna of Ohio is generally given credit for shifting during 1900 and 1901 general public sentiment in the United States and support in the Senate (by the famous "earthquake" speech in June 1902) for a canal from the Nicaragua to the Panama route; but in a claim by Mr. Cromwell before a board of arbitration in Paris in September 1907 for $800,000 fees for services rendered the New Panama Canal Company since his employment as its counsel in January 1896, the three main subjects on which powerful public men in political life were said to have been influenced were (1) defeat of Nicaragua route bills in Congress sessions in 1896–97 and 1898–99, (2) presentation and adoption of the Spooner bill in 1902, and (3) signing and ratification of the Hay–Bunau Varilla Treaty in 1903–04.

Bunau Varilla arrived in New York, September 22, 1903, conferred there with numerous important men, and went to Washington, where he saw various government officials, probably including Francis B. Loomis, assistant secretary of state, senators, and other politicians. In October 1903 news got back to the United States that money was being spent freely by United States citizens in Panama City. On October 7, Mr. Cromwell saw President Roosevelt in Washington, and on October 15 he left for Paris, returning to New York on November 17. In July 1903 Captain Chauncey B. Humphrey, 22d Infantry, United States Army, instructor in drawing at West Point, and 2d Lieutenant Grayson Mallet-Prevost Murphy, graduated from West Point June 11, 1903, and assigned to the 17th Infantry, United States Army, were sent as military intelligences on a four months' trip through northern Venezuela and Colombia, and on October 16, 1903. President Roosevelt received in person their reports, which included "as an unpremeditated incident of their return journey" such details that might be useful in a military campaign on the Isthmus of Panama as the best positions for artillery to command Panama City and Colón, particulars of each of the twenty-five stations on the railroad between Colón and Panama City and the number of mules that could be procured in interior villages. On October 17 Captain Sidney A. Cloman and Captain William G. Haan were detailed as military attachés to the United States Legation in Bogotá. On October 19 President Roosevelt instructed the Navy Department to hold warships within easy distance of the Isthmus of Panama on both the Caribbean and Pacific sides, and Secretary of the Navy William H. Moody ordered the *Boston* from San Francisco with all possible dispatch to San Juan del Sur, Nicaragua, the *Atlanta* to Guantanamo, Cuba, and

the *Dixie* from Brooklyn to League Island, Philadelphia, to take on a battalion of four hundred marines and be ready to sail on October 23. The General Staff of the army compiled [56] confidential notes on Panama, relating to a military campaign on the isthmus. Dr. Amador on October 18 wrote from New York to his son, Raoul A. Amador, a surgeon in the United States army:

> . . . Bunau Varilla . . . says that if all turns out well you will have a good place on the medical commission, which is the first thing that will begin work: that my name is in Hay's office and that certainly nothing will be refused you.
>
> The plan seems to me good. A portion of the Isthmus declares itself independent, and that portion the United States will not allow any Colombian forces to attack. An assembly is called, and this gives authority to a minister to be appointed by the new Government in order to make a treaty without need of ratification by that assembly. The treaty being approved by both parties, the new Republic remains under the protection of the United States, and to it are added the other districts of the Isthmus which do not already form part of the new Republic, and these also remain under the protection of the United States.
>
> The movement will be delayed a few days. . . . We want to have here the minister who is going to be named so that once the movement is made he can be appointed by cable and take up the treaty. In 30 days everything will be concluded.

Dr. Amador sailed on the *Yucatan* from New York for Colón on October 20, taking with him a declaration of independence for the Republic of the Isthmus, said to have been drawn up in Mr. Cromwell's office, and a silk flag made by his wife, in New York, from a United States flag in which the jack containing the stars had been replaced by a jack of blue with two stars joined by a straight line.[57] About October 22, 1903, Bunau Varilla in New York borrowed on his own securities in Paris $100,000 which he turned in to finance the preparations for the new republic. The *Yucatan* reached Colón on the morning of October 27, and Dr. Amador proceeded at once to Panama City, where a meeting of seven conspirators was held in the house of Federico Boyd at seven o'clock that evening. Dr. Amador showed the flag, which met with some objection as being too like that of the United States, and disclosed the plan to declare independent at first only the cities of Colón and Panama and the fifty-mile strip along the canal, which was immediately denounced as inadequate, since owners of cattle and large estates in the rest of the state would be ruined if not protected from Colombia. It was then unanimously decided to extend the revolutionary movement to the whole state of Panama, and to call the new nation the Republic of Panama, instead of the Republic of the Isthmus as originally intended. General José D. de Obaldía, governor of the state, who secretly favored the conspirators' plans, had on October 25

[56] Government Printing Office, Washington, November 1903.

[57] This was not the flag afterwards adopted by the republic of Panama.

sent to Penonomé, an interior town some sixty miles southwest of Panama City, a detachment of about one hundred Colombian troops under Major Leoncio Tascón, who were thought likely to remain loyal and whose officers it had not been possible to bribe, on the pretext of repelling a threatened invasion from Nicaragua. News of the pretended invasion was cabled to the New York *Herald* by its Panama correspondent, Samuel Boyd, with the idea that it might help furnish an excuse for the sending of United States warships; but instead, when the government at Bogotá heard of it, they ordered General Juan B. Tovar and Colonel Ramón G. Amaya with picked troops to proceed to Colón to join in repelling the invasion, and told Governor Obaldía to send the Colombian gunboat *Padilla* to Buenaventura to fetch other troops available there. Governor Obaldía reported these troop movements to Dr. Amador, who did not pass on the information to the other conspirators, some of whom were beginning to have some doubts, but on October 29 he cabled Bunau Varilla in New York:

> We have news of the arrival of the Colombian forces on the Atlantic side within five days. They are more than 200 strong. Urge warships Colón.

Bunau Varilla went to Washington and saw Secretary Hay at the State Department, and on October 30 Acting Secretary of the Navy Charles H. Darling cabled Commander John Hubbard of the *Nashville* at Kingston, Jamaica:

> Proceed at once to Colón. Telegraph in cipher the situation after consulting with the United States consul. Your destination is a secret.

From the train back from Washington to New York, Bunau Varilla telegraphed Dr. Amador in Panama:

> Thirty-six hours Atlantic, forty-eight Pacific.

Governor Obaldía and the Colombian military authorities on October 31 requisitioned coal for the government gunboats *Padilla* and *Bogotá* at Panama from the Panama Railroad Company, which refused to supply any, whereupon Governor Obaldía cabled Bogotá:

> Have cabled to San Francisco to get coal from the Pacific Mail. Expect reply today. Railroad refuses to give it. *Padilla* ready. Will advise of her leaving. There is no invasion. Both parties on the isthmus condemn it.

On November 1 Dr. Amador and others had a conference in Panama City with Porfirio Meléndez, who had been sent for from Colón. He agreed to take charge of the movement on the Atlantic side, and to get three hundred men then at work along the railroad gathered at the United Fruit Company's plantation at

Bocas del Toro, ostensibly to go to work for higher wages than the railroad was paying, but in fact, as their leaders were informed, to be used if necessary to overcome the Colón police force of about a hundred and fifty men, if they should remain loyal. Bunau Varilla had set Tuesday, November 3, as the day for the rising, apparently in order that the United States newspapers the next morning, full of election news, should not feature the reports from Panama; but the conspirators wanted to give the United States warships which were to protect them ample time to arrive, and also perhaps to let a French steamer sail from Colón for Cartagena before there was news for her to carry, so they fixed November 4 as the date for action in the cities on both sides. On November 2 Acting Secretary of the Navy Darling sent four cables:

Nashville, care American Consul, Colón.

Maintain free and uninterrupted transit. If interruption threatened by armed force with hostile intent, either government or insurgent, either at Colón, Porto Bello, or other point. . . . Government force reported approaching Colón in vessels. Prevent their landing if in your judgment this would precipitate a conflict.

Dixie, Kingston, Jamaica.

Proceed with all possible dispatch to Colón. Maintain free and uninterrupted transit. If interruption threatened by armed force, occupy the line of railroad. Prevent landing of any armed force with hostile intent, either government or insurgent, either at Colón, Porto Bello, or other port. . . . Government force reported approaching the Isthmus in vessels. Prevent their landing if in your judgment this would precipitate a conflict.

Glass, *Marblehead*, Acapulco.

Proceed with all possible dispatch to Panama. Your destination is secret. . . . Maintain free and uninterrupted transit. If interruption is threatened by armed force, occupy the line of railroad. Prevent landing of any armed force, either Government or insurgent, with hostile intent, at any point within 50 miles of Panama. If doubtful of the intention of any armed force, occupy Ancón Hill strongly with artillery. . . . Government forces reported approaching the Isthmus in vessels. Prevent their landing if in your judgment landing would precipitate a conflict.

Boston, San Juan del Sur, Nicaragua.

Proceed with all possible dispatch to Panama. Your destination is secret. . . . Maintain free and uninterrupted transit. If interruption is threatened by armed force, occupy the line of railroad. Prevent landing of any armed force, either Government or insurgent, with hostile intent, at any point within 50 miles of Panama. If doubtful of the intention of any armed force, occupy Ancón Hill strongly with artillery. Government forces reported approaching the Isthmus in vessels. Prevent their landing if in your judgment landing would precipitate a conflict.

The *Nashville* anchored in the harbor of Colón at 6:30 P.M. on November 2, 1903. About midnight there appeared the Colombian gunboat *Cartagena* bringing Gen-

eral Tovar and Colonel Amaya and nearly five hundred picked Colombian troops, and Commander Hubbard says in his report,

> Inasmuch as the independent party had not acted and the Government of Colombia was at that time in undisputed control of the Province of Panama I did not feel, in the absence of any instructions, that I was justified in preventing the landing of these troops, and at 8:30 they were disembarked.

Colonel James R. Shaler, general superintendent of the Panama Railroad Company, insisted on the two generals going over to Panama in a special car, leaving the troops in Colón. Commander Hubbard, after seeing the United States consul and Colonel Shaler, who told him that he had decided not to transport the Colombian troops, on November 3, cabled the secretary of the navy in Washington:

> No revolution has been declared on the Isthmus and no disturbances. Railway company has declined to transport these troops except by request of Governor of Panama. Request has not been made. It is possible that movement may be made tonight at Panama to declare independence, in which case I will . . . . [here the Navy Department said the dispatch was mutilated.] Situation is most critical if revolutionary leaders act.

General Tovar was received with the greatest cordiality by Governor Obaldía and other officials at Panama, and after reviewing the Colombian regiment under General Esteban Huertas in front of the depot and being driven to the governor's house, he proceeded to the military barracks. There at about 1:30 P.M. he apparently first heard the news of a general public rumor that something was going to happen that evening. Until midday of November 3, aside from the United States consuls and naval officers, there seem to have been but fifteen men in the whole of Panama who knew of the popular uprising for independence that was to occur within five hours: Dr. Manuel Amador Guerrero, Julio Fabrega Manuel Amador, his son, Ricardo Arias, Tomás Arias, Federico Boyd, Samuel Boyd, his brother, J. Gabriel Duque, Manuel Espinosa B., Tracy Robinson, Governor José D. de Obaldía and General Esteban Huertas, and four officials of the Panama Railroad Company: Colonel James R. Shaler, general superintendent, Herbert G. Prescott, assistant superintendent, Captain James R. Beers, freight agent, and José Agustín Arango, attorney and land agent. Alarmed by what he heard, General Tovar sent to Governor Obaldía requesting him to order immediate dispatch of the train with the troops from Colón. A little later the governor's secretary reported to General Tovar that the railroad was making difficulties in sending the troops because of money said to be owing the railroad company from the government, and Tovar then and again later offered Obaldía the necessary cash to pay for transporting the troops. By 4:30 news had spread all over Panama City that

something was going to happen, and the public had been informed that a mass meeting was to be held in Santa Ana Plaza at 5:00 P.M. At this point Felix Ehrman, of the Ehrman Bank and United States vice consul general, received a cable from Washington:

> Uprising on Isthmus reported. Keep department promptly and fully informed,
> Loomis, Acting,

and replied,

> No uprising yet. Reported will be in the night. Situation is critical.

General Huertas at the barracks, with a company of soldiers under Captain Marco A. Salazar, arrested Generals Tovar, Francisco de P. Castro, military commander of Panama, Luis Alberto Tovar, commander of the gunboat *Bogotá*, and Caycedo Alban, Colonel Amaya, Colonel Carlos Morales, Captain Angel M. Tovar, and later some loyal Colombians, including Dr. José Angel Porras, and imprisoned them at police headquarters. In the Plaza de la Catedral at 5:00 P.M. the fire brigade began giving out arms to the people. Dr. Amador sent Commander Antonio A. Valdez to arrest Governor Obaldía, who turned over the keys of the treasury peaceably to Valdez and was left a prisoner under arrest in Amador's own house. Dr. Amador at 5:49 P.M. caused Prescott to telephone to Meléndez in Colón, "The sancocho is about to begin," [58] and went to Felix Ehrman, who immediately cabled Washington:

> Uprising occurred tonight, 6; no bloodshed. Army and Navy officials taken prisoners. Government will be organized tonight, consisting three consuls, also cabinet. Soldiers changed. Supposed same movement will be effected in Colón. Order prevails so far. Situation serious. Four hundred soldiers landed today, Baranquilla.

Dr. Amador met José A. Arango, Federico Boyd, and Tomás Arias at the corner of Catedral Plaza, where they were cheered by the crowd, and the latter three, as a provisional junta of government, telegraphed Colonel Shaler in Colón they hoped he would keep transit uninterrupted, but would not bring over any Colombian soldiers. Colonel Martínez, paymaster and next in command of the gunboat *Bogotá*, when he heard of the arrest of the generals, sent a message that if they were not released within two hours he would bombard the city; he got no reply and accordingly from about six to half past he fired five or six shells into the city, killing one Chinaman in Salsipuedes Street and a mule at the slaughterhouse. The Municipal Council met and recognized the junta of three as a *de facto* govern-

[58] Sancocho, a kind of thin stew of boiled yucca, meat, plantains, etc.

ment. The manifesto and declaration of independence were read, and a cable was sent to President Roosevelt in Washington:

The municipality of Panama is now (10 P.M.) holding a solemn session and joins in the movement of separation of the Isthmus of Panama from the rest of Colombia. It hopes for recognition of our cause by your Government.

Meanwhile on November 3 in Colón, Colonel Eliseo Torres, senior officer of the troops after General Tovar's departure, had tried all day to obtain transportation to Panama City for his 450 men, appealing to Colonel Shaler and Oscar Malmros, the United States vice consul, but was met with various excuses and no action. On the evening of November 3, Commander Hubbard of the *Nashville* sent Colonel Shaler a letter reading:

Sir: The condition of affairs at Panama being such that any movement of troops in the neighborhood must inevitably produce a conflict and interrupt that transit of the Isthmus which the United States Government is pledged to maintain uninterrupted, I am obliged to prohibit the carrying of troops of either party or in either direction by your railroad, and hereby notify you that I do so prohibit it.

The next day, November 4, Commander Hubbard cabled to the secretary of the navy in Washington:

Provisional government was established at Panama Tuesday evening; no organized opposition. Governor of Panama, General Tovar, General Amaya, Colonel Morales and three others of the Colombian Government troops who arrived Tuesday taken prisoners at Panama. I have prohibited transport of troops now here across the Isthmus.

Meléndez at the Astor House told Colonel Torres of the revolution, and that the independence of Panama was secured by the United States, whose warships were then in the harbor. Torres became very much excited and swore he would destroy the town unless the Colombian generals were at once released. His anger was not diminished by receipt of a notice from Commander Hubbard that he had forbidden transport on the railroad of Colombian troops from Colón, and Torres then threatened to burn down the town and kill every American in it if the generals were not released before two o'clock. On hearing of this, Consul Malmros with vice consul James Hyatt went to see Colonel Shaler, and they three at 1:00 P.M. called Commander Hubbard ashore. He advised that all United States citizens in Colón should take refuge in the shed of the Panama Railroad Company, a substantial stone building, and there at 1:30 he posted a party of forty-seven men from the *Nashville*, which he brought in close to the water front with decks cleared for action. The Colombians surrounded the building, and there was great tension for about an hour and a half, but no shot was fired. The captain of the

Colombian gunboat *Cartagena*, when he saw the *Nashville* move, got up steam and left the harbor at full speed. Colonel Torres about 3:13 came to the railroad building and after a talk with Meléndez, it was agreed that Colonel Eleazer Guerrero, *alcalde* (mayor) of Colón should go over on a special train to Panama, see General Tovar, and get orders from him; and that, meanwhile, Colonel Torres would withdraw the Colombian troops to Monkey Hill if the United States sailors were reëmbarked on the *Nashville* and the town left in charge of the Colón police until the return of the *alcalde*. This was agreed to and done.

At Panama on November 4 the Municipal Council had a formal session, read the declaration of independence, recognized the authority of the junta, and accepted a cabinet of six secretaries, appointed by the junta, as the new government of the Republic of Panama. When Colonel Guerrero arrived from Colón he was taken to police headquarters and there had an interview with General Tovar, who, as a prisoner, declined to give him any orders then or at a second interview the next morning. On the morning of November 5 Commander Hubbard at Colón landed an armed force again, with two one pounders, and reoccupied the railroad building; and on the return of the *alcalde* about 11:00 A.M. with no orders from General Tovar, Colonel Torres marched his troops into Colón. Meléndez offered Colonel Torres his expenses and a substantial indemnity if he would embark on the Royal Mail steam packet *Orinoco* then in Colón harbor, but Colonel Torres still insisted that General Tovar and his staff be brought over from Panama. After a conference between Commander Hubbard and Colonel Shaler, it was agreed that the generals should be sent for. Before difficulties at the Panama City end had been cleared away, Colonel Torres agreed to embark on the *Orinoco* with his troops if he was given $8,000 and his passage paid. Colonel Shaler paid over the money in United States twenty-dollar gold pieces; but the Royal Mail Company's agent wanted some assurance that passage money for the 21 officers and 438 enlisted men from Colón to Cartagena would be paid, and after some discussion, Colonel Shaler and apparently Commander Hubbard signed a guarantee to the Royal Mail Company for a little over £1,000. As the troops were embarking on the *Orinoco*, the United States warship *Dixie* arrived in the bay, and at Commander Hubbard's request at once landed four hundred marines, from nineteen small boats. Commander Hubbard reported to Commander Francis H. Delano, his superior, on the *Dixie* when she anchored at 7:05 P.M.; and the *Nashville's* men were reëmbarked while two companies of marines from the *Dixie* under Major John A. Lejeune patrolled the town. The declaration of independence was publicly read in Colón at 10 A.M. on November 6, and the flag of the new republic was raised by Major William M. Black of the Engineer Corps

of the United States Army, in uniform. On November 6 Vice Consul General Felix Ehrman from Panama City cabled the secretary of state in Washington:

> The situation here is peaceful. Isthmian movement has obtained, so far, success. Colón and interior Provinces have enthusiastically joined independence. Not any Colombian soldiers known on Isthmian soil at present. *Padilla* equipped to pursue *Bogotá*. Bunau Varilla has been appointed officially agent of the Republic of Panama in Washington.

In fact, independence had not yet been heard of in the interior, and a steam launch was sent by Meléndez to Bocas del Toro on November 6 to notify that town of the movement. At 12:51 P.M. on the same day Secretary Hay replied:

> The people of Panama have by an apparently unanimous movement dissolved their political connections with the Republic of Colombia and resumed their independence. When you are satisfied that a *de facto* government, republican in form, and without substantial opposition from its own people, has been established in the State of Panama, you will enter into relations with it as the responsible Government of the territory and look to it for all due action to protect the persons and property of citizens of the United States and to keep open the Isthmian transit in accordance with the obligations of existing treaties governing the relations of the United States to that territory.

In Panama on November 6 Eduardo Ycaza, who had been appointed paymaster by the junta, began paying off those who had assisted in the movement. Most of the officers got $10,000 each; General Huertas got $30,000 in silver and later $50,000 in gold, and General Ruben Varón, commander of the *Padilla*, got $35,000 in all. The enlisted men had been paid in full by their government down to and for October. On November 7 the U.S.S. *Boston* arrived in Panama Bay, and on that day Vice Consul Ehrman wrote the junta:

> As it appears that the people of Panama have, by unanimous movement, dissolved their political connection with the Republic of Colombia and resumed their independence and as there is no opposition to the Provisional Government in the city of Panama, I have to inform you that the Provisional Government will be held responsible for the protection of the persons and property of citizens of the United States as well as to keep the Isthmian transit free, in accordance with the obligations of existing treaties relative to the Isthmian territory.

The province of Chiriquí with its capital, David, held out against independence until a letter from the provisional government warned the Colombian commander that if he did not join the revolution a white ship of the United States navy would appear in those waters. The provisional officials did not, in fact, recognize the Republic of Panama until December 7, 1903, when the U.S.S. *Boston* and *Concord* escorted the gunboat *Padilla*, which had been taken over by the junta and rechristened the *21st of November*, into the harbor of David with Panama officials on board. In Washington on November 7 Mr. William J.

Curtis,[59] Mr. Cromwell's partner, had an interview with the President, and Secretary of State John Hay gave out an official press statement which said:

> The action of the President is not only in the strictest accordance with the principles of justice and equity and in line with events precedents of all public policy, but it was the only course he could have taken in compliance with our treaty rights and obligations.

On the opening day of the 58th Congress, November 9, 1903,[60] Representative Robert R. Hitt of Illinois introduced in the House of Representatives a resolution calling on the President for all correspondence and official documents relating to the recent revolution on the isthmus, and it was passed immediately without objection. General Rafael Reyes was sent from Bogotá on November 9, with General Pedro Nel Ospina, Lucas Caballero, and Jorge Holguín as special commissioners, to negotiate a settlement with the Panama rebels and a new canal treaty with the United States. The U.S.S. *Marblehead* with Admiral Henry Glass on board and the U.S.S. *Concord* arrived in Panama Bay on November 10, 1903. Immediately on his arrival Admiral Glass issued orders to the senior United States naval officer in Panama Bay, transmitting the Navy Department's cable of November 9, and saying,

> In carrying out that part of the Department's instructions directing that the landing of men with hostile intent within the limits of the State of Panama be prevented, you will make such disposition of the force under your command as may be necessary.

He sent the *Boston* to patrol Cape Mala and San Miguel Bay and the *Concord* to patrol Parita Bay, both to prevent the landing of Colombian troops. The U.S.S. *Hannibal* arrived at Colón on November 11 and the U.S.S. *Wyoming* at Panama City on November 13. On November 11 Admiral Glass removed the restrictions as to the moving of troops over the Panama Railroad. Secretary Hay in a circular telegram to all United States diplomatic representatives on November 14, 1903,[61] said:

> The President yesterday fully recognized the Republic of Panama and formally received its minister plenipotentiary. You will promptly communicate this to the Government to which you are accredited.

Rear Admiral Joseph B. Coghlan arrived at Colón on the U.S.S. *Mayflower* on November 15, and the U.S.S. *Maine* arrived there on November 16. General Reyes and his party arrived at Colón on November 19, and after declining to go on board the *Mayflower* were allowed to go to Panama City, where they conferred with Panama officials and General Reyes ordered the Colombian forces in the

[59] 1854–1927. Year Book, *Ass'n of the Bar of the City of New York* (1928), 389.

[60] *Cong. Rec.*, 58th Cong., 1st Sess., XXXVII, 151.

[61] *U. S. For. Rel.*, 1903, LXXXIII, 245. Moore, *Dig. Int. Law* (Washington, 1906), III, 55. *British Year Book of Int. Law*, XIV (1933), 69. *Rev. d'Hist. Dipl.* (Paris, 1914), XXVIII, 275–316.

interior to do nothing hostile until further orders from him. On November 20 General Reyes wrote Admiral Glass asking in what zone the United States government prohibited the landing of troops, to which Admiral Coghlan replied on the same day:

> Our present orders are to prevent the landing of men with hostile intent within the limits of the State of Panama.

General Reyes sailed on November 21 on a French steamer from Colón for Port Limón, Costa Rica, to proceed from there by fruit steamer to New Orleans, and thence to Washington, for conferences with Dr. Amador and others. The rest of his party, with the Colombian generals who had been prisoners in Panama City, eventually made their way back safely to Colombia.

Panama sent Dr. Amador and Federico Boyd, with Dr. Pablo Arosemena as counsellor, as special delegates to Washington to assist Bunau Varilla in negotiating a satisfactory treaty with the United States. They reached New York on November 17, conferred there the next day with Mr. Cromwell, who had arrived from Paris also on November 17, and did not reach Washington until after Bunau Varilla [62] had signed there with Secretary Hay the hastily drawn treaty which within a year gave rise to serious difficulties between the United States and Panama. This treaty of November 18, 1903,[63] provided:

> Art. 1. The United States guarantees and will maintain the independence of the Republic of Panama.
>
> Art. 2. The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colón and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

[62] Philippe Bunau-Varilla, *Historia Auténtica de la Escandalosa Negociación del Tratado del Canal de Panamá* (Panama, 1930). Panama-United States Relations (Panama, 1934).

[63] Ratified by Panama (Decree No. 24), Dec. 2, 1903; ratified by the United States, Feb. 25, 1904; ratifications exchanged at Washington, Feb. 26, 1904. 33 Stat. L. II, 2234. *U. S. Treaties Series*, No. 431. *Treaties of the U. S.* (Malloy, 1910), II, 1349. *Leyes de Panamá, 1936–37* (Panama, 1937), 144. *U. S. For. Rel.*, 1904, I, 543–655. 96 *British and Foreign State Papers* 553; 101 *ibid.* 515. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXI (1905), 599. *Amer. J. Int. Law*, III, (1909), Supp., 130. Hugh Gordon Miller, *The Isthmian Highway* (New York, 1929).

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

Art. 3. The Republic of Panama grants to the United States all the rights, power and authority within [the zone and all auxiliary lands and waters described in Article 2] which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

Art. 4. As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

Art. 5. The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific ocean.

Art. 7. The Republic of Panama grants to the United States within the limits of the cities of Panama and Colón and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and of any works of sanitation . . . which, in the discretion of the United States, may be necessary and convenient.

Art. 8. The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama. . . .

Art. 9. The United States agrees that the ports at either entrance of the Canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colón, shall be free for all time. . . .

Art. 14. As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid.

Art. 18. The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section I of Article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

Art. 23. If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

Art. 25. For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States.

On November 29 President Roosevelt sent the treaty to the Senate for approval, and in his third annual message, to the 58th Congress on the opening day of the second session, December 7, 1903,[64] he said:

I am enabled to lay before the Senate a treaty providing for the building of the canal across the Isthmus of Panama. This was the route which commended itself to the deliberate judgment of the Congress, and we can now acquire by treaty the right to construct the canal over this route. The question now, therefore, is not by which route the isthmian canal shall be built, for that question has been definitely and irrevocably decided. The question is simply whether or not we shall have an isthmian canal. . . .

A treaty concluded between the representatives of the Republic of Colombia and of our Government was ratified by the Senate. This treaty was entered into at the urgent solicitation of the people of Colombia. . . . The Government of Colombia made the treaty, and yet when the Colombian Congress was called to ratify it the vote against ratification was unanimous. It does not appear that the Government made any real effort to secure ratification.

Immediately after the adjournment of the Congress a revolution broke out in Panama. The People of Panama had long been discontented with the Republic of Colombia, and they had been kept quiet only by the prospect of the conclusion of the treaty, which was to them a matter of vital concern. When it became evident that the treaty was hopelessly lost, the people of Panama rose literally as one man. Not a shot was fired by a single man on the Isthmus in the interest of the Colombian Government. Not a life was lost in the accomplishment of the revolution. The Colombian troops stationed on the Isthmus, who had long been unpaid, made common cause with the people of Panama, and with astonishing unanimity the new Republic was started.

Senator Edward W. Carmack of Tennessee later remarked that the President was not far wrong when he said that the people of Panama rose as one man, but that that man was Roosevelt. Rollo Ogden, editor of the New York *Evening Post*, in 1904 [65] likened President Roosevelt's part in taking Panama from Colombia to the story of King Ahab and Naboth's Vineyard. Seven years later, ex-President Roosevelt in a speech to the students of the University of California at Berkeley on March 23, 1911,[66] said:

I am interested in the Panama Canal because I started it. If I had followed traditional conservative methods I should have submitted a dignified state paper of probably 200 pages

[64] *Messages and Papers of the President* (Richardson), XV, 6784 at 6806, 6809. Moore, *Dig. Int. Law* (Washington, 1906), III, 46.

[65] "Panama, 899 B.C." See I Kings, Chap. 21, Verses 1–16.

[66] "I Took the Isthmus," Francisco Escobar (?) (New York, 1911). Leander T. Chamberlain, "A Chapter of National Dishonor," *No. Amer. Rev.*, CXCV (1912), 145. (In French, London, 1912; in Spanish, Bogotá, 1912.) Theodore Roosevelt, *The Panama Blackmail Treaty* (Metropolitan Mag., New York, February 1915).

to the Congress and the debate would have been going on yet. But I took the Canal Zone and let Congress debate, and while the debate goes on the canal does also.

Until about the end of January 1904 President Roosevelt kept the navy and army on the outlook on both sides of the isthmus and on land for possible hostile movements from Colombia, despite the fact, obvious to those familiar with the geography of the eastern end of the isthmus, that there was no practicable overland way to reach Panama with troops from the interior of Colombia. Admiral Glass reported in his last active message on January 25, 1904:

> It is believed that the Panamans, unaided, could not be successful in expelling an invasion.

General Reyes, after reaching Washington, pursued with Secretary Hay an exchange of lengthy notes from December 23, 1903 to January 13, 1904,[67] in which he reviewed the grievances and protest of Colombia at the part of the United States in what had taken place, and asked that Colombia's claims for violation of the Treaty of 1846, especially in Article 35, and all other claims which might hereafter be made in connection with the events of Panama, be submitted to the arbitration tribunal of The Hague, to which Secretary Hay answered that the State Department was unable to regard the complaints of Colombia against the United States government as having any valid foundation and perceived no occasion for a resort to The Hague tribunal, but would take up questions which might be a proper subject of negotiation and in the exercise of good offices bring them to the attention of the government of Panama, and that,

> As this Government had no participation in the preparation of the revolution, it has no concern with the details of its history.

Numerous resolutions requesting from the president further facts and documents with regard to the secession of Panama and the negotiations leading up to the treaty were introduced in the Senate [68] and reports, with papers, were sent in by the president on November 16 and 27 and December 18, 1903, and January 18, February 3 and 24, 1904. After warm discussion [69] the United States Senate on February 23, 1904, by a vote of 66 to 14 [70] advised ratification of the treaty. On April 29, 1904, Leslie M. Shaw, United States secretary of the treasury, sent Secretary Hay a treasury warrant for $1,000,000 payable to the republic of

[67] Moore, *Dig. Int. Law* (Washington, 1906), III, 78–113.

[68] By Senators George F. Hoar of Mass. on Dec. 9, 1903; Charles A. Culberson of Texas on Dec. 11, 1903 and Jan. 25, 1904; John T. Morgan of Ala. on Dec. 14 and 18, 1903, Jan. 27, 28 and Feb. 18, 1904; Arthur P. Gorman of Md. on Jan. 5, 1904; John W. Daniel of Va. on Jan. 12, 1904; William J. Stone of Mo. on Jan. 13, 1904; Eugene Hale of Maine on Jan. 13 and 20, 1904; and Francis G. Newlands of Nev. on Jan. 27, 1904.

[69] *Cong. Rec.*, 58th Cong., 2d Sess., XXXVIII, I, 65, 112, 238, 361, 473, 488, 613, 700, 912; II, 1101, 1103, 1176, 1239, 1246, 1247, 1302, 2014; III, 2207; S. Doc. 51. *U. S. For. Rel.*, 1903, pp. 230–349; 1904, pp. 204–224; 1906, I, 421–439. *Arch. Dipl.*, 3e Sér. (1904), LXXXIX, I, 235.

[70] *Cong. Rec.*, 58th Cong., 2d Sess., XXXVIII, I, 316, 363, 399, 425, 459, 516, 703; II, 1170, 1303, 1361.

[70] *Cong. Rec.*, 58th Cong., 2d Sess., XXXVIII, III, 2260.

Panama, J. Pierpont Morgan & Company, financial agents; and on May 19, 1904, he sent Acting Secretary Loomis a similar warrant for $9,000,000, both under the Isthmian Canal Act of June 28, 1902,[71] as amended by the Act for Temporary Government of the Canal Zone,[72] providing for payment of the money to the Republic of Panama.

The United States took over the canal property on May 4, 1904,[73] and at once established an army post, with commissary store and other conveniences for officers and their families. Anyone who walked in with the necessary cash could walk out with what he wanted, however, and as the goods sold had, of course, paid no Panama import duty, Panama merchants and revenue officials at once began to feel the injurious effects of the free trade. George W. Davis, governor of the Canal Zone, signed with Tomás Arias, secretary of state, and Ramón Valdés López, attorney general, of the republic, at Panama City on June 15, 1904,[74] an agreement specifying the location of the precise boundaries of the Canal Zone, being the lands, waters, and islands which had been delivered, and of the city and harbor of Colón and of Panama City. The land lines were subsequently located upon the ground and monumented. Besides the commissary sales,[75] the Panama officials were bothered by the right granted the United States in Article 7 of the treaty to acquire by eminent domain lands in the cities of Panama and Colón, and upset by the evident doubt cast on Panama's continued sovereignty over the Canal Zone by the wording of Article 3. Secretary of War William H. Taft, under whose department the Canal Zone was placed, visited Panama and took up the existing differences with President Amador personally, with the result that on December 3, 1904,[76] a conventional agreement was reached between the two governments, which was carried out by the United States in a series of six executive orders issued from December 3, 1904, to January 7, 1905, by Secretary Taft "by direction of the President." These orders cut down the classes of goods that might be entered at Ancón and Cristóbal, the terminal ports of the canal, and settled further questions as to postal, currency, voting, highway, and hospital matters over which difficulties had arisen. These executive orders were later said by the United States to have been intended as a temporary arrangement to cover the period of construction of the canal, but they appeared to have been ratified in the blanket confirmation of "all . . . orders . . . adopted and promulgated in the Canal Zone by order of the President" effected by Sec-

[71] See Sec. 15A, Note 32, *supra*.

[72] Act of April 28, 1904, c. 1758. 33 Stat. L. 429. 98 *British and Foreign State Papers* 1129.

[73] *U. S. For. Rel.*, 1904, pp. 224, 302.

[74] *Treaties of the U. S.* (Malloy, 1923), III, 2752.

[75] Cf. *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 6577, 6595. *Arch. Dipl.*, 3e Sér. (1904), XCII, IV, 1462.

[76] *Treaties of the U. S.* (Malloy, 1923), III, 2756–67. *U. S. For. Rel.*, 1905, p. 239. Executive Orders Relating to the Panama Canal; Ann. 1921 (Mt. Hope, C. Z., 1922).

tion 2 of the Panama Act of August 24, 1912,[77] and it was thought necessary in 1922 to have their abrogation formally authorized by Congress.[78]

On January 9, 1906,[79] the United States Senate passed a resolution to investigate matters connected with the Panama Canal, and hearings were held before the Senate committee on interoceanic canals, at which Mr. Cromwell on February 27 and 28, March 1 and 2, and May 9, 1906, refused to answer various questions put to him, pleading privilege of counsel. Senator John T. Morgan of Alabama, in a memorandum on a motion to the full committee to compel the witness to answer the questions, said:

> His demeanor as a witness, as is shown by the record, was such as to repel confidence in his integrity.

Secretary of State Elihu Root in his reply of February 10, 1906,[80] to Diego Mendoza Pérez, Colombian minister in Washington, stated that he found no new statement of grievances nor reasons for an arbitration and no ground for departing from the conclusions reached by his predecessor, as set forth in the Reyes-Hay correspondence of December 23, 1903 to January 13, 1904, except that the treaty with Panama had since been ratified by the United States and the necessary money appropriated; and added that,

> You repeat the charge that the Government of the United States took a collusive part in fomenting or inciting the uprising upon the Isthmus of Panama which ultimately resulted in the revolution. I regret that you should see fit to thus renew an aspersion upon the honor and good faith of the United States in the face of the positive and final denial of the fact contained in Mr. Hay's letter of Jan. 5, 1904. You must be well aware that the universally recognized limitations upon the subjects proper for arbitration forbid that the United States should submit such a question to arbitration.

Minister Mendoza seemed determined to insist on obtaining from the United States a declaration that that country had carried out the revolution in Panama, and he was recalled[81] and threatened with a trial for treason after Bogotá heard that his attitude was leading to a proposal by Colombian citizens on the Atlantic coast that the departments of Antioquia and Cauca should join with Panama to form an interoceanic republic under protection of the United States.

Panama learned that the United States was granting the Central and South American Telegraph Company of New York a contract to lay a cable through the Bay of Limón (Manzanillo Bay) to Colón, and on July 22, 1907,[82] José Agustín

[77] See Sec. 15C, *infra*.

[78] Act of Feb. 12, 1923, c. 69. 42 Stat. L. I, 1225. Proclamation by President Coolidge, May 28, 1924. 43 Stat. L. II, 1952. *U. S. For. Rel.*, 1923, II, 638–687.

[79] *Cong. Rec.*, 59th Cong., 1st Sess., XL, I, 845; VIII, 7402, S. Doc. 457, VII, Ser. 4915, 59th Cong., 1st Sess. (May 25, 1906).

[80] *U. S. For. Rel.* (1906), I, 419–421.

[81] *U. S. For. Rel.* (1906), I, 436–439.

[82] *U. S. For. Rel.* (1908), pp. 677–680. Philip C. Jessup, *Law of Territorial Waters* (New York, 1927), 427.

Arango, minister of Panama in Washington, protested to the State Department that the whole of the Bay of Limón was territorial waters of Panama. Secretary of State Robert Bacon on January 2, 1908, instructed Minister Herbert G. Squiers to advise the government of Panama that Panama had no jurisdiction whatever, of any kind, over waters through which ships must pass in entering the Panama Canal. Enrique Cortés, who succeeded Mendoza as Colombian minister in Washington, helped by the amicable negotiations of John Barrett, United States minister in Bogotá, with General Rafael Reyes, then president, succeeded in producing nominally friendlier relations and eventually signed with Secretary Root and Carlos Constantino Arosemena, minister of Panama, the so-called tripartite treaties of January 9, 1909,[83] of which the one between the United States and Panama,[84] although ratified by both countries, never came into effect, for it was expressly (Article 5) made dependent upon the other two, which Colombia refused to ratify.

During the Taft-Bryan presidential campaign the New York *World* printed on October 3, 1908, a news story, apparently inspired by Mr. Cromwell's press agent, Jonas Whitley, concerning an alleged syndicate containing several prominent United States politicians and financiers which bought the rights of the bondholders in the De Lesseps company after it was known to insiders that the United States would pay $40,000,000 for the French properties. The *World* tried to get additional information, especially in Paris, and printed in all six articles on the 1903 revolution and the canal purchase. On the day before election, in November 1908 the Indianapolis *News* in an editorial asked who got the $40,000,000 the United States paid for the canal. Mr. Roosevelt who, although president, had taken charge of the campaign, was greatly mortified when Indiana, though carried for Taft by a narrow margin, elected a Democratic governor, legislator, and senator, and he attributed the result largely to the *News*. President Roosevelt on December 1, 1908, denounced the conduct of Delavan Smith, editor of the *News*, as "not merely scandalous but infamous," and asserted that the United States "paid $40,000,000 direct to the French Government," which distributed the money. The *World* thereupon challenged flatly some of the president's statements and demanded a Congressional investigation. On December 15, 1908,[85] President Roosevelt sent a special message to Congress denouncing Mr. Joseph Pulitzer, and soon thereafter ordered Attorney General Charles J. Bonaparte to institute criminal proceedings in the District of Columbia against the *World* and the *News*. On February 17, 1909, a grand jury of the District returned indict-

[83] See Secs. 14 and 15A, this chap., *supra*.

[84] Ratified by Panama, Jan. 27, 1909; by the United States, March 3, 1909. *U. S. For. Rel.*, 1909, pp. 223–226.

[85] *Messages and Papers of the Presidents* (Richardson), XVI, 7348.

ments against Joseph Pulitzer, the Press Publishing Company, publisher, Caleb M. Van Hamm and Robert H. Lyman, news editors of the *World*, and Delavan Smith and Charles R. Williams, owners of the *News*. The government's attempt to remove Smith and Williams from Indianapolis to the District of Columbia for trial was defeated by a decision of United States District Judge Albert B. Anderson on October 28, 1909,[86] discharging them from custody. The government thereupon abandoned the other District of Columbia indictments (eventually causing them to be dismissed, on March 31, 1911), but sought to proceed against the Press Publishing Company and Mr. Van Hamm on an indictment for criminal libel obtained on March 4, 1909, by United States Attorney Henry L. Stimson, in the Southern District of New York, for circulating twenty-nine copies of the issues of the *World* containing the articles objected to on the military reservation at West Point and in the post office building in New York City. The *World* obtained from the District Court in New York orders for letters rogatory for the examination of witnesses in Panama, which were used, and in Paris, where the French government allowed only voluntary testimony, and sent Henry N. Hall, one of its staff correspondents, to Bogotá. The case came on for trial on February 26, 1910, before Judge Charles M. Hough, and after announcing that the defense would be justification under a plea of not guilty, Delancey Nicoll, attorney for the *World*, upon the close of the government's evidence moved to quash the indictment. Judge Hough granted the motion on the ground that the offense charged was under state and not federal jurisdiction. The government, under President Taft, appealed the case to the Supreme Court of the United States, where it was heard on October 24, 1910, and the decision below was unanimously affirmed on January 3, 1911.[87]

Representative Henry T. Rainey of Illinois, who in October 1908 had expressed his intention of forcing a full congressional inquiry if possible, introduced in the House of Representatives on April 6, 1911,[88] a resolution for an investigation into the "taking" of Panama. The resolution was referred to the House Committee on Foreign Affairs and never got any further, but the committee held public hearings on January 26 and February 9–20, 1912, and elicited from Mr. Hall and others a great amount of oral and documentary testimony. The United States supervised the elections in Panama in 1911,[89] and in 1912[90] informed Panama in effect that it must not grant any concessions

[86] United States *v* Smith (1909), 173 Fed. 227. *Harvard Law Review*, XXIII (1909), 309.

[87] United States *v* Press Publishing Co. (1911), 219 U. S. 1, 31 S. Ct. 212, 55 L. Ed. 65. *Bench & Bar*, XXIV (1911), 43. *Va. L. Reg.*, XVI (1911), 782.

[88] H. Res. 32, *Cong. Rec.*, 62d Cong., 1st Sess., XLVII, I, 113. *The Story of Panama* (Washington, 1913), 736 pp. *Diplomatic History of the Panama Canal* (Washington, 1914); S. Doc. 474, 63d Cong., 2d Sess., 602 pp.

[89] *U. S. For. Rel.*, 1912, pp. 1133–1165.

[90] *U. S. For. Rel.*, 1912, pp. 1167–1206; 1913, pp. 1081–1104; 1914, pp. 1028–1036; 1917, pp. 1179–1204.

to foreigners to build railroads near the Canal Zone or the existing Panama Railroad.

The United States was deep in the controversies over the canal tolls[91] with England from 1912 to 1914, and over the Urrutia-Thomson Treaty of April 6, 1914, with Colombia until its approval by the United States Senate on April 20, 1921.[92] Meanwhile, the Panama Canal had been completed and opened to general traffic on August 15, 1914,[93] and the United States was paying the Republic of Panama $250,000 in gold on each February 26 from 1904 through 1933. William J. Price, United States minister to Panama, and Ernesto T. Lefévre, secretary of state of the republic, signed at Panama City on September 2, 1914,[94] a boundary convention which (Article 1) accepted existing located and monumented boundary lines of the zone ten miles wide, with modifications, (Article 2) recognized United States use, occupation, and control of the areas to be covered by Gatun Lake and its shores up to an elevation of one hundred feet above mean sea level, all islands, and peninsulas accessible by land only over the zone, (Article 3) described the permanent boundary line with Panama City and (Article 4) harbor and (Article 5) with Colón and (Article 6) harbor. It likewise provided (Article 8) that Panama was to maintain Sabanas Road in Panama City, and that (Article 10) all rights of the parties under the Canal Treaty of November 18, 1903, were to be expressly preserved.

United States Secretary of State Robert Lansing signed with Eusebio A. Morales, minister of Panama, in Washington on October 10, 1914,[95] a protocol agreeing that hospitality extended in the waters of Panama to a belligerent vessel or auxiliary should serve to deprive such vessel of like hospitality in the Canal Zone for three months, and vice versa. In 1920[96] the United States, under its right of expropriation in Article 2 of the canal treaty, required from Panama for the erection of defensive fortifications fifteen hectares of the island of Taboga in Panama Bay and a tract of one hundred and twenty-five hectares called Largo Remo in Las Minas Bay, east of Colón.

The provisions of the 1903 treaty, even with the modifications allowed by the Taft agreement, continued irksome to Panama, and after two years of negotia-

[91] See Sec. 15C, *infra*.

[92] See Sec. 15A, *supra*.

[92] *U. S. For. Rel.*, 1914, p. 16. Félix Billot, *L'Ouverture du Canal de Panama et les Intérêts des Colonies Françaises* (Paris, 1913). Enrico Catellani, *Il Canale di Panama* (Roma, 1913). Daniel Billet, *La Nouvelle Voie Maritime, Le Canal de Panama* (Paris, 1914). Edgardo Giaccone, *Il Canale di Panama* (Milano, 1914). G. Keller, *Het Panamakanaal* (Amsterdam, 1915). 113 *British and Foreign State Papers* 1198.

[94] Ratified by Panama (Law 29), Dec. 8, 1914; ratified by the United States, Jan. 4. 1915; ratifications exchanged at Panama City, Feb. 11, 1915. 38 Stat. L. II, 1893. *U. S. Treaty Series*, No. 610. *Treaties of the U. S.* (Malloy, 1923), III, 2770. 108 *British and Foreign State Papers* 522. *U. S. For. Rel.*, 1915, pp. 1123–1130. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., IX (1919), 4.

[95] 38 Stat. L. II, 2039, 2042. *U. S. Treaty Series*, No. 597. *U. S. For. Rel.*, 1914, Supp., 556, 651–655. 108 *British and Foreign State Papers* 528, 639. *Gac. Of.*, Num. 2154 (Panama City, Dec. 16, 1914). *Amer. J. Int. Law*, IX (1915), 167; IX, Supp., 126, 130; IX, Spec. Supp., 200, 201. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., IX (1919), 20.

[96] *U. S. For. Rel.*, 1920, III, 314–322; 1921, II, 616–622.

tions Secretary of State Frank B. Kellogg signed with Ricardo J. Alfaro, minister of Panama, in Washington on July 28, 1926, a new treaty expressing the changes which Panama desired so far as the United States was willing to grant them. The new treaty was submitted to the National Assembly of Panama on December 15, 1926, and discussed there and outside.[97] Consideration of it was finally suspended on January 26, 1927. The principal objections appeared to be to the provisions (Preamble) which seemed to be a recognition by Panama of rights of sovereignty by the United States in the Canal Zone, (Article 1) to the continuation in the United States of the right to expropriate further lands, (Article 2) to the cession of a further area in the northern part of the city of Colón, (Article 4) to the insufficient closing by the United States of the Canal Zone to the open commerce of the world, and (Article 11) to the agreement of Panama to coöperate with the United States in the protection and defense of the canal. Dr. Eusebio A. Morales, finance minister of Panama, explained to the eighth session of the League of Nations Assembly at Geneva on September 10, 1927,[98] that the treaty of July 28, 1926, did not violate the Covenant of the League, and suggested that the question of sovereignty over the Canal Zone might be submitted to arbitration. The United States Department of State announced emphatically on September 12, 1927, that as between Panama and the United States there was nothing to arbitrate.

In February 1934 the United States, having gone off the gold basis, offered Panama $250,000 in devalued currency,[99] which Panama refused, returning the check to the United States Treasury and demanding payment according to the terms of the treaty, in gold, worth later about $430,000 in the other money (of one dollar equal to one balboa). In 1935 there was talk again in Panama of the need for a new treaty with the United States, and in January the Colón press asked for a popular referendum on the question. Negotiations running over several months resulted in a general understanding in August 1935, and an agreement in principle was announced on November 20, 1935.

United States Secretary of State Hull and Assistant Secretary Sumner Welles signed with Dr. Ricardo J. Alfaro, minister of Panama, and Dr. Narciso Garay, special minister of Panama, in Washington on March 2, 1936,[100] a general treaty and three conventions. The treaty, expressly superseding

[97] *Mem. de Rels. Ext.* (Panama, 1936), viii. Fabian Velarde, *Analisis del Nuevo Tratado* (Panama, 1927). Francesco Cosentini (?), *Los Tratados y las Convenciones de la "Zona del Canal de Panamá"* (Panama, 1927). *Survey of Int. Affairs*, 1927 (London, 1929), 519. *Rec. des Cours*, XLVII (1934), 66.

[98] *League of Nations Official Journal*, 8th Assembly (Geneva, 1927), Records, Plenary Meetings, 100–103.

[99] *Rec. des Cours*, LX (1937), 751.

[100] Ratified by Panama (Law 37), Dec. 24, 1936; ratified by the United States, July 26, 1939; ratifications exchanged at Washington, July 27, 1939. 53 Stat. L. III, 1807. *U. S. Treaty Series*, No. 945. *Cong. Rec.*, 76th Cong., 1st Sess., LXXXIV, IX, 9824. *Leyes de Panamá 1936–37* (Panama, 1937), 116. *Mem. de Rels. Ext.* (Panama, 1936), XI. 51. *Amer. J. Int. Law*, XXXI (1937), 297.

Articles 1 and 9 and amending Article 7 of the convention of November 18, 1903, provided:

Art. 1. There shall be a perfect, firm, and inviolable peace and sincere friendship between the United States of America and the Republic of Panama and between their citizens. . . .

The United States of America will continue the maintenance of the Panama Canal for the encouragement and use of interoceanic commerce, and the two Governments declare their willingness to coöperate, as far as it is feasible for them to do so, for the purpose of insuring the full and perpetual enjoyment of the benefits of all kinds which the Canal should afford the two nations that made possible its construction as well as all nations interested in world trade.

Art. 2. The United States of America declares that the Republic of Panama has loyally and satisfactorily complied with the obligations which it entered into under Article 2 of the Convention of November 18, 1903, by which it granted in perpetuity to the United States the use, occupation, and control of the zone of land and land under water as described in the said Article, of the islands within the limits of said zone, of the group of small islands in the Bay of Panama, named Perico, Naos, Culebra, and Flamenco, and of any other lands and waters outside of said zone necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the Panama Canal or of any auxiliary canals or other works, and in recognition thereof the United States of America hereby renounces the grant made to it in perpetuity by the Republic of Panama of the use, occupation and control of lands and waters, in addition to those now under the jurisdiction of the United States of America outside of the zone as described in Article 2 of the aforesaid Convention.

Art. 3. [Restricts certain commercial activities of the United States in the Canal Zone.]

Art. 4. [Merchandise destined for agencies of the United States Government shall enter Panama free of duties.]

Art. 5. [Port facilities other than those owned by the Panama Railroad Company in the ports of Panama and Colón may be operated only by Panama.]

Art. 6. [The United States renounces the right to acquire by eminent domain lands or properties in or near the cities of Panama and Colón.]

Art. 7. Beginning with the annuity payable in 1934 the payments under Article 14 of the Convention of November 18, 1903, between the United States of America and the Republic of Panama, shall be B/430,000 as defined by the agreement embodied in an exchange of notes of this date.

Art. 8. [The United States transfers to Panama a corridor to connect the city of Colón with other territory of Panama.]

Art. 9. [Panama transfers to the United States a corridor 200 feet wide to connect the Madden Dam area with the Canal Zone proper.]

Art. 10. In case of an international conflagration or the existence of any threat of aggression which would endanger the security of the Republic of Panama or the neutrality or security of the Panama Canal, the Governments of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests. Any measures, in safeguarding such interests, which it shall appear essential to one Government to take, and which may affect the territory under the jurisdiction of the other Government, will be the subject of consultation between the two Governments.

Art. 11. The provisions of the Treaty shall not affect the rights and obligations of either of the two High Contracting Parties under the treaties now in force between the two countries.

Sixteen notes from Secretary Hull and an equal number from Drs. Alfaro and Garay, all dated March 2, 1936, established agreements upon numerous minor points of application and interpretation, chiefly in Articles 3, 4, 5, and 7 of the treaty. The only one [101] of the conventions which has been ratified provides for the construction of a transisthmian highway between the cities of Panama and Colón, by which (Article 1) the United States undertook to obtain from the Panama Railroad Company such waiver of its exclusive right to establish roads across the isthmus as might be necessary to enable Panama to construct a highway from a point on the boundary of the Madden Dam area at Alhajuela to a point on the boundary of the Canal Zone near Cativá, and (Article 2) the United States undertook to construct without delay at its own expense that portion of the highway between the Canal Zone boundary near Cativá and a junction with the Fort Randolph Road near France Field, which portion was to be maintained thereafter by Panama at its own expense, (Article 4) the highway to be eighteen feet wide, paved with concrete, and (Article 5) to be completed within ten years. Another convention [102] agrees that (Article 1) the two countries will regulate the use of radio-electric communications in the republic and the Canal Zone (Article 2) so that any assignment of frequency shall not interfere with stations in the other jurisdiction, (Article 4) all operations to be under a license in accordance with the international convention regulations (Madrid, 1932), (Article 7) within certain areas government operation only to be allowed, (Article 8) with consultation as to licenses and censorship and (Article 10) future stations for the United States if needed. By the third convention [103] the United States agrees to transfer to the government of Panama for its exclusive official use the radio stations of Puerto Obaldía and La Palma. The treaty and the three conventions were sent by President Roosevelt, with a letter of Secretary Hull, in April 1936 to the United States Senate, where the treaty was discussed from time to time for three years, finally publicly in committee of the whole Senate.[104] The major controversy turned on the provisions of Article 10, but on the strength of notes exchanged on July 25, 1939, between Secretary Hull and Augusto S. Boyd, minister of Panama, showing that the National Assembly of Panama had before it the notes and minutes of the treaty negotiations when it ratified the treaty and the

[101] 53 Stat. L. III, 1869. *U. S. Treaty Series*, No. 946. *Cong. Rec.*, 76th Cong., 1st Sess., LXXXIV, IX, 9907. *Leyes de Panamá 1936–37* (Panama, 1937), 140. *Mem. de Rels. Ext.* (Panama, 1936), 99. Joint Highway Board: Leopoldo Arosemena, Eng., for Panama; Colonel Glen E. Edgerton for United States.

[102] *Leyes de Panamá 1936–37* (Panama, 1937), 130. *Mem. de Rels. Ext.* (Panama, 1936), 86. *U. S. For. Rel.* (1923), II, 695–704.

[103] *Leyes de Panamá 1936–37* (Panama, 1937), 138. *Mem. de Rels. Ext.* (Panama, 1936), 96.

[104] *Cong. Rec.*, 76th Cong., 1st Sess., LXXXIV, IX, 9824–9846, 9899–9907.

three conventions, all proposed amendments were withdrawn or rejected and ratification of the treaty was agreed to on July 25, 1939, by a vote of 65 to 16. Immediately thereafter ratification of the highway convention was agreed to without a record vote. The other two conventions, as to radio communications and the transfer of two radio stations to Panama, upon opposition by Senator Wallace H. White, Jr., of Maine, were laid over in the Senate on July 25, 1939, and have not yet been acted on. In accordance with Article 7 of the treaty the United States on September 20, 1939, paid Panama $2,580,000 in full for the six unpaid annual rent installments from 1934 to 1939, inclusive, which Panama had refused to accept in devalued dollars.

Since 1904 the United States has concluded with Panama many treaties of a general character, relating to such matters as claims, extradition, traveling salesmen, smuggling, streets, sanitation, and immigration problems, such as might be entered into between any two sovereign states, as well as many other conventions and agreements of a minor nature affecting the details of daily living and administration in the peculiar circumstances of interlaced jurisdiction in which the two states find themselves. A bill [105] to require that all skilled, technical, clerical, administrative, and supervisory employees on written contracts in the Canal Zone should be citizens of the United States and be paid not less than canal employees was introduced in Congress on January 16, 1940, under administrative auspices, with a letter of approval of January 15, 1940, from Secretary of War Harry H. Woodring. The House bill was passed on January 29, 1940, without a record vote, and the Senate bill on February 1, but the latter was reconsidered for a proposed amendment by Senator Elmer Thomas of Oklahoma. Canal officials stated publicly that for lack of funds, to train between 3,245 and 5,000 new men and to pay higher wages, the measure would handicap canal operations. Panama protested that it was in effect a breach of the good neighbor policy, whereupon President Roosevelt and Secretary of State Cordell Hull assured Panama officials that the Senate would kill the bill. A bill to require employment of American citizens in all except unskilled labor classifications in the Panama Canal Zone introduced by Representative Fritz G. Lanham of Texas on February 15, 1940,[106] was opposed by Secretary Woodring and Governor Clarence S. Ridley as contrary to the policy of operating the canal on a self-sustaining basis and entirely unnecessary as a defense measure. On April 6, 1940, it was announced that Panama and the United States had come to an agreement for co-

[105] H. R. 7941, introduced by Representative Andrew J. May of Kentucky; Jan. 23, H. Rep. 1529. S. 3130, introduced by Senator Morris Sheppard of Texas, chairman of the committee on military affairs; Jan. 29, S. Rep. 1168. *Cong. Rec.* 76th Cong., 3d Sess., LXXXVI, Part I, 352, 411, 615, 716, 745, 877, 884, 906; Part II, 1269; Part IV, 4241; Daily ed., Sept. 27, 1940, p. 19263. Hearings on S. 3130 before Senate comm. on military affairs, Jan. 19 and 26, 1940 (Washington, 1940).

[106] H. R. 8496. Referred to committee on Merchant Marine and Fisheries.

operation in the construction of a heavy-duty concrete highway seventy-five miles long from Balboa southwest to the Río Hato airport, Panama to use $2,500,000 borrowed from the Export-Import Bank of the United States, and the United States to contribute $1,500,000 of material and supplies, and engineers to collaborate on the two and one-half year construction task.

C. Panama Canal Zone

The Canal Zone is a strip of territory ten miles wide, five miles on either side of the Panama Canal (except around Gatun Lake), and 40.27 miles long, at about 9° N latitude and 79° W longitude from Cristóbal (Canal Zone) and Colón (Panama) in Mosquito Gulf on the Atlantic to Balboa (Canal Zone) and Panama City (Panama) in the Gulf of Panama on the Pacific. Occupation by the United States and work on the canal by Army engineers began on May 4, 1904, and the canal was opened to traffic on August 15, 1914,[107] after a construction cost of $546,636,490. The canal has twenty-two angles, eight in Culebra or Gaillard Cut. It is eight miles long and three hundred feet wide, and has three sets of locks (each lock 1,000 feet long and 110 wide). The normal transit time is eight hours. The damming of the Chagres River on the north (by Gatun Dam, 8,400 feet long) for use in the Gatun Locks (1.2 miles long) and of the Río Grande on the south for use in the Pedro Miguel ($\frac{5}{6}$ mile long) and Miraflores (a mile long) locks, raised the levels of Gatun Lake ($23\frac{3}{4}$ miles long) to eighty-five feet above sea level and of Miraflores Lake (a mile long) to fifty-four feet above sea level; and among other effects cut off on a hilltop, thereafter known as Barro Colorado, in Gatun Lake, a considerable number of species of flora and fauna, including agoutis, coatis, monkeys, and peccaries, whose subsequent development is being watched by scientists with interest. The Atlantic end of the canal is 33.52 miles north and 27.02 miles west of the Pacific end. Madden Dam across the Chagres River higher up, at Alhajuela in Panama, built under private contract, further controls the water supply for the Locks. The Panama Railroad, a line forty-eight miles long with a five-foot gauge, from Colón to Panama City, built in 1850–55, was nearly all relocated in 1904 along the hills on the east side of the canal. The Canal Zone has been under the jurisdiction of the War Department from the beginning of United States control, with a civil government under an Army colonel, usually of the Engineers, as governor[108] assisted by the heads of nine major departments and divisions.

[107] Formal official opening, July 12, 1920.

[108] Governors have been:
Col. George Washington Goethals, Apr. 1, 1914 to Jan. 11, 1917.
Col. Chester Harding, Jan. 11, 1917 to Mar. 27, 1921.
Col. Jay Johnson Morrow, Mar. 28, 1921 to Oct. 1924.
Col. Leriwether Lewis Walker, Oct. 16, 1924 to Oct. 15, 1928.

The Clayton-Bulwer Treaty (convention of April 19, 1850) provided that (Article 1) neither the United States nor Great Britain would ever erect or maintain any fortifications near or commanding an interoceanic ship canal in Central America, that (Article 5) they would guarantee forever the neutrality of such canal, and that (Article 8) any canal or railway should be open to the citizens of the United States and Great Britain on equal terms. The first Hay-Pauncefote convention, of February 5, 1900, which failed of ratification, continued (Article 2) the general principle of neutralization and adopted the Suez rules, including a provision (rule 7) for no fortifications. The Hay-Pauncefote Treaty of November 18, 1901, superseded the Clayton-Bulwer convention and provided (Article 3) for the neutralization of the canal and adopted six of the Suez rules, including the requirement that,

> 1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

It omitted rule 7, regarding no fortifications. The Isthmian Canal Act of June 28, 1902, provided that the United States should (Section 1) perpetually protect the canal, and (Sections 3, 4, 5) defend it and its harbors.

The gradual evolution of the Panama Canal from one in theory to be guaranteed and protected by all nations of the world caring to join with its builders to one constructed, owned, and defended by the United States alone, while preserving the "general principle of neutralization," left several problems of international law to be worked out by time and developing circumstances. The omission from the Hay-Pauncefote Treaty as finally agreed to of the rule forbidding fortifications seemed to some authorities still to leave the United States under a moral obligation, inferable from the rest of the treaty and all the preceding negotiations, not to risk the promised neutralization or immunity from war by preparing war machines at hand; while to others it seemed perfectly proper for the United States to take all necessary and proper measures in support of the stipulated defense of the canal, and so of its own national defense, and to presume no breach of the agreed neutrality other than would necessarily occur in any war to which the United States was a party.[109] The United States has in fact since moved ahead

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Col. Harry Burgess, Oct. 16, 1928 to Sept. 13, 1932.
Col. Julian L. Schley, Oct. 21, 1932 to Aug. 9, 1936. (Acting from Sept. 13, 1932.)
Col. Clarence S. Ridley, Aug. 25, 1936 to July 5, 1940.
Col. Glen E. Edgerton, July 5, 1940.

[109] *Juridical Rev.* (Edinburgh, 1902), XIV, 79. George W. Davis, *Amer. J. Int. Law*, III (1909), 885–908. Peter C. Hains, *Amer. J. Int. Law*, III (1909), 354–394. H. S. Knapp, "The Real Status of the Panama Canal as Regards Neutralization," *Amer. J. Int. Law*, IV (1910), 314–358. *Rev. gén. de dr. int. pub.*, XVII (1910), 549, 624; XVIII (1911), 89. Crammond Kennedy, *Amer. J. Int. Law*, V (1911), 620–638; VII (1913), 27. Richard Olney, *Amer. J. Int. Law*, V (1911), 298–301. Eugene Wambaugh, *Amer. J. Int. Law*, V (1911), 615–619.

to progressively more and more massive, secret, and remote "defense" fortifications, and stringent rules for protection of the canal, in peace or in war, while respecting the general principle of neutrality by permitting the actual transit of the canal by armed vessels, prizes, and prisoners of countries at war with each other but not with the United States. Should this country get into the present Hitler war, it is safe to assume that, as in the World War,[110] the Canal Zone and its approaches will be considered to be exactly like any other territorial possession of the United States and entry be allowed to all allies and forbidden to all enemies.

The problem of tolls involved a serious diplomatic struggle and could not be disposed of so completely by dominating *ex parte* action by the United States. President Taft in a message to Congress on December 21, 1911,[111] on the financial condition of the Treasury, wrote:

> Now that the canal is about to be completed and to be put under a permanent management, there ought to be specific statutory authority for its regulation and control and for the government of the zone, which we hold for the chief and main purpose of operating the canal. . . . I renew my recommendation with respect to the tolls of the canal that within limits, which shall seem wise to Congress, the power of fixing tolls be given to the President. In order to arrive at a proper conclusion, there must be some experimenting, and this cannot be done if Congress does not delegate the power to one who can act expeditiously.
>
> I am very confident that the United States has the power to relieve from the payment of tolls any part of our shipping that Congress deems wise. We own the canal. It was our money that built it. We have the right to charge tolls for its use. Those tolls must be the same to everyone; but when we are dealing with our own ships, the practice of many Governments of subsidizing their own merchant vessels is so well established in general that a subsidy equal to the tolls, an equivalent remission of tolls, cannot be held to be a discrimination in the use of the canal. The practice in the Suez Canal makes this clear.

On March 15, 1912,[112] a bill, subsequently to be known as the Panama Canal Act, was introduced in the United States House of Representatives by Representative William C. Adamson of Georgia, chairman of the committee on interstate and foreign commerce. As presented from the committee, the bill provided for tolls for the use of the canal to be charged all vessels except those owned by the government of the United States, including those of the Panama Railroad Company. The bill was taken up in the House on May 16,[113] and debated with great fervor,[114]

Frank W. Mondell in *The Independent* (New York, July 4, 1912). Norman J. Padelford, *Amer. J. Int. Law*, XXXIV (1940), 416, 601. *U. S. For. Rel.*, 1914, pp. 317–318. *Rec. des Cours* (1925), II, 63, 207–217. Geoffrey Butler, *Development of Int. Law* (London, 1928), 494. L. Oppenheim, *Int. Law* (4th ed., London, 1928), I, 392. *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 6574; XII, App. 679. The S.S. "*Wimbledon*," Perm. Ct. of Int. Justice (1923), Ser. A, No. 1, 26–28.

[110] 40 Stat. L. II, 1667.

[111] Annual Message, Part IV. *Messages and Papers of the Presidents* (Richardson), XVII, 7687–7689. *U. S. For. Rel.*, 1912, p. 468.

[112] H. R. 21969. *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, IV, 3461.

[113] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 6568.

[114] As to tolls: *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 6582–6591, 6596, 6601–08, 6642–6736, 6746–62, 6777–78, 6904–21; XI, 11211–15; XII, App. 174, 228, 230.

and on May 21 it was amended by the adoption of a new Section 5,[115] proposed by Representative Frank E. Doremus of Michigan, which provided that no tolls should be levied upon vessels engaged in the coastwise trade of the United States. The bill was passed on May 23 [116] without a record vote and sent to the Senate. There it was referred to the committee on interoceanic canals [117] and reported out on June 12 [118] with numerous amendments not affecting the coastwise tolls exemption. The question of tolls was a matter with which Great Britain felt herself legitimately concerned, and on July 8, 1912,[119] A. Mitchel Innes, the British chargé d'affaires, wrote Secretary of State Philander C. Knox:

> The attention of His Majesty's Government has been called to the various proposals that have from time to time been made for the purpose of relieving American shipping from the burden of the tolls to be levied on vessels passing through the Panama Canal, and these proposals together with the arguments that have been used to support them have been carefully considered with a view to the bearing on them of the provisions of the treaty between the United States and Great Britain of November 18th, 1901.
>
> The proposals may be summed up as follows:
>
> (1) To exempt all American shipping from the tolls.
> (2) To refund to all American ships the tolls which they may have paid.
> (3) To exempt American ships engaged in the coastwise trade.
> (4) To repay the tolls to American ships engaged in the coastwise trade.
>
> The proposal to exempt all American shipping from the payment of the tolls, would, in the opinion of His Majesty's Government, involve an infraction of the treaty, nor is there, in their opinion any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case, and the adoption of the alternative method of refunding the tolls in preference to that of remitting them, while perhaps complying with the letter of the treaty, would still contravene its spirit.
>
> It has been argued that a refund of the tolls would merely be equivalent to a subsidy and that there is nothing in the Hay-Pauncefote treaty which limits the right of the United States to subsidise its shipping. It is true that there is nothing in that treaty to prevent the United States from subsidising its shipping and if it granted a subsidy His Majesty's Government could not be in a position to complain. But there is a great distinction between a general subsidy, either to shipping at large or to shipping engaged in any given trade, and a subsidy calculated particularly with reference to the amount of user of the Canal by the subsidised lines or vessels. If such a subsidy were granted it would not, in the opinion of His Majesty's Government, be in accordance with the obligations of the treaty.
>
> As to the proposal that exemption shall be given to vessels engaged in the coastwise trade, a more difficult question arises. If the trade should be so regulated as to make it certain that only bona-fide coastwise traffic which is reserved for United States vessels would be

[115] By a vote of 100 to 90 in Committee and 147 to 128 in the House. *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 6770, 6921, 7019.

[116] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 7021, 7022.

[117] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 7083.

[118] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VIII, 7985; IX, 9059.

[119] *U. S. For. Rel.*, 1912, pp. 467–489.

benefited by this exemption, it may be that no objection could be taken. But it appears to my Government that it would be impossible to frame regulations which would prevent the exemption from resulting, in fact, in a preference to United States shipping and consequently in an infraction of the treaty.

Secretary Knox on July 12, 1913,[120] sent a transcription of the note to Senator Frank B. Brandegee of Connecticut, chairman of the senate committee on interoceanic canals. The bill was taken up in the Senate on July 15,[121] debated,[122] further amended,[123] though not as to the coastwise tolls exemption, and passed on August 9.[124] The House and Senate bills differed materially, and when the joint conferees reported on August 15 [125] it was seen that the House had receded generally and agreed on the Senate version. The conference report was agreed to by the Senate on August 16 [126] and by the House on August 17.[127] After the correction of an error in enrollment,[128] the bill was sent to the President and signed by him on August 24, 1912.[129] The bill as enacted provided:

> Sec. 5. That the President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal; *Provided*, That no tolls, when prescribed as above, shall be changed, unless six months' notice thereof shall have been given by the President by proclamation. No tolls shall be levied upon vessels engaged in the coastwise trade of the United States.

In a memorandum of August 24, 1912,[130] President Taft said:

> In signing the Panama Canal bill I wish to leave this memorandum. . . . I wish to consider the objections to the bill in the order of their importance.
>
> First. The bill is objected to because it is said to violate the Hay-Pauncefote Treaty in discriminating in favor of the coastwise trade of the United States by providing that no tolls shall be charged to vessels engaged in that trade passing through the canal. This is the subject of a protest by the British Government. . . . The sole question is, Has the United States, in the . . . Hay-Pauncefote Treaty, deprived itself of the exercise of the right to pass its own commerce free or to remit tolls collected for the use of the Canal? . . . There is nothing in the Hay-Pauncefote Treaty preventing Great Britain and the other nations from extending such favors as they may see fit to their shipping using the canal, and doing it in the way they see fit. . . . The policy of exempting the coastwise trade from all tolls really involves the question

[120] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, IX, 8990.

[121] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, IX, 9059.

[122] As to tolls: *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, IX, 9064–75, 9168–89, 9215–17, 9222–27, 9231–39, 9278–84, 9353–54, 9359–65, 9466–71, 9804–20, 10272–83, 10296–302, 10342–96, 10429–37, 11054, 11064.

[123] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, XI, 10583–90.

[124] By a vote of 47 to 15. *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, XI, 10589, 10590.

[125] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, XI, 10956, 11131.

[126] By a vote of 48 to 18. *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, XI, 11053–11065.

[127] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, XI, 11131–39, 11202–17.

[128] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, XI, 11069, 11218.

[129] Act of Aug. 24, 1912, c. 390 (Public No. 337). 37 Stat. L. 560. Wilhelm Kaufmann, "La Loi amér. du 24 août, 1912," *Rev. de dr. int. et de lég. comp.*, XIV (Bruxelles, 1912), 581–613. *For. Aff.*, X (1932), 294. *Amer. J. Int. Law*, VI (1912), 976; VI, Supp., 277.

[130] *Messages and Papers of the Presidents* (Richardson), XVII, 7758–7763.

of granting a Government subsidy for the purpose of encouraging that trade in competition with the trade of the trans-continental railroads. . . .

In a message sent to Congress after this bill had passed both Houses I ventured to suggest a possible amendment by which all persons, and especially all British subjects who felt aggrieved by the provisions of the bill on the ground that they are in violation of the Hay-Pauncefote Treaty, might try that question out in the Supreme Court of the United States. I think this would have satisfied those who oppose the view which Congress evidently entertains of the treaty and might avoid the necessity for either diplomatic negotiation or further decision by an arbitral tribunal. Congress, however, has not thought it wise to accept the suggestion, and therefore I must proceed in the view which I have expressed, and am convinced is the correct one, as to the proper construction of the treaty and the limitations which it imposes upon the United States. I do not find that the bill here in question violates those limitations.

On the whole, I believe the bill to be one of the most beneficial that has passed this or any other Congress.

In exercise of such authority President Taft on November 13, 1912,[131] fixed the rates of toll to be paid by vessels using the Panama Canal at $1.20 per net vessel ton for merchant vessels carrying passengers or cargo, and on army and navy transports, colliers, hospital and supply ships; 40 per cent less on vessels in ballast; and 50 cents per displacement ton on other naval vessels. Great Britain protested again on November 14, 1912,[132] that the coastwise tolls exemption was a violation of and inconsistent with the provisions of the Hay-Pauncefote Treaty requiring equality of treatment, and that while the United States had entire right to grant a subsidy to its own shipping, and perhaps even to favor genuine coastwise traffic, this form of doing it invited collusion and evasion which would result in discrimination. In a message of December 6, 1912,[133] President Taft wrote:

The proclamation which I have issued in respect to the Panama Canal tolls is in accord with the Panama Canal act passed by this Congress Aug. 24, 1912. We have been advised that the British Government has prepared a protest against the act and its enforcement in so far as it relieves from the payment of tolls American ships engaged in the American coastwise trade on the ground that it violates British rights under the Hay-Pauncefote treaty concerning the Panama Canal. When the protest is presented, it will be promptly considered and an effort made to reach a satisfactory adjustment of any difference there may be between the two Governments.

Secretary of State Knox replied to Great Britain on January 17, 1913, and on February 27, 1913, Great Britain addressed her last note of protest to the Taft administration. In 1913 the Canal Administration took over for the United States

[131] 37 Stat. L. II, 1769. *U. S. For. Rel.*, 1912, p. 481. *Amer. J. Int. Law*, VII (1913), Supp., 145.

[132] *Despatch to H. M. Ambassador at Washington* (London, 1912), Misc. No. 12; Cd. 6451. *U. S. For. Rel.*, 1909, pp. 290–294; 1912, pp. 467–489. 105 *British and Foreign State Papers* 366.

[133] Annual Message, Part II. *Messages and Papers of the Presidents* (Richardson), XVII, 7806.

government absolute ownership of all land in the Zone and proceeded to oust all citizens of Panama and all non-employee civilians from within the Zone boundaries.

President Woodrow Wilson was inaugurated on March 4, 1913, and on March 5, 1914,[134] he went before a joint session of the two Houses of Congress and delivered personally a brief special address, in which he said:

> I have come to ask you for the repeal of that provision of the Panama Canal Act of August 24, 1912, which exempts vessels engaged in the coastwise trade of the United States from payment of tolls, and to urge upon you the justice, the wisdom, and the large policy of such a repeal with the utmost earnestness of which I am capable.
>
> In my own judgment, very fully considered and maturely formed, that exemption constitutes a mistaken economic policy from every point of view, and is, moreover, in plain contravention of the treaty with Great Britain concerning the canal concluded on November 18, 1901. But I have not come to urge upon you my personal views. I have come to state to you a fact and a situation. Whatever may be our own differences of opinion concerning this much debated measure, its meaning is not debated outside the United States. Everywhere else the language of the treaty is given but one interpretation, and that interpretation precludes the exemption I am asking you to repeal. We consented to the treaty; its language we accepted, if we did not originate it; and we are too big, too powerful, too self-respecting a nation to interpret with a too strained or refined reading the words of our own promises just because we have power enough to give us leave to read them as we please. The large thing to do is the only thing we can afford to do, a voluntary withdrawal from a position everywhere questioned and misunderstood. We ought to reverse our action without raising the question whether we were right or wrong, and so once more deserve our reputation for generosity and for the redemption of every obligation without quibble or hesitation.

Several bills to repeal the coastwise tolls exemption were introduced in Congress at once, and one of Representative Thetus W. Sims of Tennessee, for the committee on interstate and foreign commerce, was after a highly partisan debate passed by the House on March 31, 1914,[135] and sent to the Senate, where it was amended by the addition of a provision against the waiver by the United States of any rights under the Hay-Pauncefote Treaty or the 1904 treaty with Panama. After arduous further debate, the bill was passed by the Senate on June 11, 1914,[136] the House concurred in the amendment, and the repeal became law on June 15, 1914.[137]

With the colorful advocates ranged on opposite sides of the question, the

[134] *Messages and Papers of the Presidents* (Richardson), XVII, 7933. *Cong. Rec.*, 63d Cong., 2d Sess., LI, V, 4313, 4346.

[135] H. R. 14385. By a vote of 247 to 163. *Cong. Rec.*, 63d Cong., 2d Sess., LI, V, 4567, VI, 6087–89.

[136] By a vote of 50 to 35. *Cong. Rec.*, 63d Cong., 2d Sess., LI, X, 10247–48, 10328–42.

[137] Public No. 113; Act of June 15, 1914, c. 106. 38 Stat. L. I, 385. 108 *British and Foreign State Papers* 638. *Amer. J. Int. Law*, VIII (1914), 592. C. A. Hereshoff-Bartlett, "The Panama Canal Act," *Law Mag. & Rev.* (London), November 1912. Charles Herbert Stockton, *Panama Canal Tolls* (Annapolis, 1912). Amer. Soc. Int. Law, Seventh Meeting (Washington, 1913), *Proceedings*, 30–246. Chandler P. Anderson, "Panama Canal Tolls," S. Doc. 32, 63d Cong., 1st Sess. (Washington, 1913). George C. Butte, *Great Britain and the Panama Canal* (Heidelberg, 1913). John H. Latané, "The Panama Canal Act and the British Protest," *Amer. J. Int. Law*, VII (1913), 17–26. L. Oppenheim, *The Panama Canal Conflict* (Cambridge, 1913). H. Erle Richards, *The Panama Canal Controversy* (Oxford, 1913). Joseph F. Robinson (1913), Mich. St. Bar Ass'n, *Pro-*

personalities involved, and the ardor which a debate affecting the relations of the United States to Great Britain always arouses in the Congress, the issue would not down and assumed from time to time political aspects, though the crucial votes in either House were not always finally cast on strict party lines. A Republican administration under President Warren G. Harding took office on March 4, 1921, and on April 13, 1921,[138] Senator William E. Borah of Idaho introduced in the Senate a bill to provide for free tolls for American ships through the Panama Canal; from the committee on interoceanic canals he reported it on June 13, 1921, without amendment.[139] Despite an intimation on August 11 that President Harding wished the matter put off until after the approaching Disarmament Conference,[140] it was debated in the Senate, October 4–10,[141] passed on October 10, 1921,[142] and sent to the House, where it was referred to the committee on interstate and foreign commerce[143] and peacefully died there. The Californians have always taken a lively interest in canal affairs, hoping usually for some relief from what they considered the railroad octopus that strangled their well-being for so long; and on January 26, 1938,[144] Senator William G. McAdoo introduced in the Senate a new bill to restore the coastwise tolls exemption. The bill was opposed by the State Department and by Secretary of War Harry H. Woodring, in a letter dated January 19, 1938, as granting a subsidy on an unsound basis; and after being referred to the Senate committee on interoceanic canals the bill was not heard of again.

The problem of territorial sovereignty, upon which the Spanish–American republics are so sensitive, is in the present case obviously almost incapable of a true statement which, while admitting realistically the facts on one side, sentimentally saves national feelings on the other. By the Canal Treaty of 1903 (Article 3), titular sovereignty over the strip of land constituting the Canal Zone and its approaches may remain in the Republic of Panama, but all the rights, power, and authority which it "would possess and exercise if it were the sovereign" of that territory are granted in perpetuity to the United States.[145] The

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ceedings, 23d Meeting, 67–74. Eugene Wambaugh, "Exemption from Panama Tolls," *Amer. J. Int. Law*, VII (1913), 233. Hugh G. Miller, *The Panama Canal Tolls Controversy* (Boston, 1914). Lewis Nixon, *The Canal Tolls and American Shipping* (New York, 1914). George A. Talley, *The Panama Canal, Tolls and Treaties* (Washington, 1916). Peace Handbooks, *International Canals* (London, 1920), XXIII, No. 150, 67–76. *Rec. des Cours* (1933), XLVI, 472.

[138] Senate No. 665. *Cong. Rec.*, 67th Cong., 1st Sess., LXI, I, 187. *U. S. For. Rel.*, 1921, II, 127–132.

[139] *Cong. Rec.*, 67th Cong., 1st Sess., LXI, III, 2471.

[140] *Cong. Rec.*, 67th Cong., 1st Sess., LXI, V, 4880.

[141] *Cong. Rec.*, 67th Cong., 1st Sess., LXI, VI, 5978–85, 6064–66, 6119–44, 6147–69.

[142] By a mixed party vote of 47 to 37. *Cong. Rec.*, 67th Cong., 1st Sess., LXI, VI, 6169. *Amer. Bar Ass'n Journal*, VII (1921), 305, 499, 532.

[143] *Cong. Rec.*, 67th Cong., 1st Sess., LXI, VI, 6236.

[144] Senate No. 3321. *Cong. Rec.*, 75th Cong., 3d Sess., LXXXIII, I, 1095.

[145] *U. S. For. Rel.*, 1904, pp. 598, 613. *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, IX, 9224, 9364; X, 9551. Lester H. Woolsey, "The Sovereignty of the Panama Canal Zone," *Amer. J. Int. Law*, XX (1926), 117. Jorge E. Boyd, "La République de Panama," *Rev. gén. de dr. int. pub.*, XVII (1910), 614–624. *For. Aff.*, IX (1931), 220. *Rec. des Cours*, 1929 (1931), XXX, 381, 384.

Supreme Court and other authorities in the United States have decided that for the purposes and according to the wording of most of the United States statutes which might affect the canal, the ports of the Canal Zone are foreign ports,[146] but this does not necessarily settle the question of sovereignty.[147]

The civil law, as inherited from Spain through Colombia and Panama, was at first intended to be maintained and attempted to be upheld for the Canal Zone;[148] but the impact of United States juridical notions grew too strong, with the overwhelming inflow of United States citizens and institutions. After twenty-eight years, with the adoption by the United States Congress in February 1933 of new codes to go into effect, October 1, 1933, the effort to maintain the civil law was finally abandoned and the law of the Canal Zone was definitely and completely changed to the common law system.[149] The Canal Zone–Panama boundaries total 124 miles in length.

16. United States

A. Canada–United States

Since the American Revolution this boundary of 3,986.7 miles, across 1,788.5 miles of land and 2,198.2 miles of water [1] along twelve states, has never been the subject of an appeal to force and, as propagandists of various kinds playing on sentiment for their own purposes from time to time take pleasure in reminding us, is unarmed and undefended. Special diplomatic negotiations and two arbitrations having dealt with particular sections, it is now also undisputed; and angry incidents, invasions, and threatened wars such as inflamed the border from time to time down to the end of the Civil War [2] have been unheard of for three-quarters of a century.

The Provisional Articles agreed upon between Richard Oswald for Great Britain and John Adams, Benjamin Franklin, John Jay, and Henry Laurens for

[146] Tariff Act of 1909; *Ops. Atty. Gen. U. S.*, XXVII (1909), 594. Federal uniform bills of lading, Act of Aug. 9, 1916; Macomber & Whyte Rope Co. *v.* United Fruit Co. (1912), 225 Ill. App. 286. Relief of alien seamen; Comp. Dec. U. S. (1926), V, 647. Mail pay; Luckenbach S. S. Co. *v.* United States (1930), 280 U. S. 173, 50 S. Ct. 148, 74 L. Ed. 356; reversing (1929), 66 Ct. Clms. 679. *Harvard Law Review*, XLIII (1930), 836.

[147] *Rev. de Der. Int.* (Paris, 1928), II, 1132.

[148] *Cong. Rec.*, 62d Cong., 2d Sess., XLVIII, VII, 6571, 6575, 6579, 6762, 6771, 6890, 6901; X, 10455.

[149] Civil Code; Act of Feb. 27, 1933, c. 128; 47 Stat. L. I, 1124 (based on the Code of California). Code of Civil Procedure; Act of Feb. 27, 1933, c. 127; 47 Stat. L. I, 908. Criminal Code, amended; Act of Feb. 21, 1933, c. 109; 47 Stat. L. I, 859. Code of Criminal Procedure, amended; Act of Feb. 21, 1933, c. 110; 47 Stat. L. I, 880. Compiled in Canal Zone Code; Act of June 19, 1934, c. 667; 48 Stat. L. I, 1122. *Am. Bar Ass'n Journal*, XX (1934), 233.

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[1] Edward M. Douglas, "Boundaries, Areas, Geographic Centers, and Altitudes of the United States and the several States," *Bulletin* 817, U. S. Dept. of the Interior; H. Doc. 113, 71st Cong., 1st Sess. (2d ed., Washington, 1930), 22, 25. Samuel Whittemore Boggs, *International Boundaries* (New York, 1940), 40, 215.

[2] John T. Faris, *The Romance of the Boundaries* (New York, 1926). 26 *British and Foreign State Papers* 1372. 8 Stat. L. 54.

the thirteen original States at Paris on November 30, 1782,[3] provided that the boundaries of the United States should be:

Art. 2. From the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source of St. Croix river to the Highlands; along the Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut river; thence down along the middle of that river to the 45th degree of north latitude; from thence, by a line due west on said latitude until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the isles Royal and Phelippeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi. . . . East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy to its source, and from its source directly north to the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean, from those which fall into the river St. Laurence; comprehending all islands within 20 leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

The definitive treaty of peace signed at Paris, September 3, 1783,[4] repeated provisional Article 2 verbatim as its Article 2, including the reference to the nonexistent Isle Phelippeaux.[5] The Jay Treaty of Amity, Commerce, and Navigation concluded at London, November 19, 1794,[6] provided:

Art. 4. Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace between His Majesty and the United States: it is agreed that measures shall be taken in concert between His Majesty's Government in America and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed, by amicable negotiation, to regulate the boundary line in

[3] *Treaties of the U. S.* (Malloy, 1910), I, 580.

[4] 8 Stat. L. 80. *Treaties of the U. S.* (Malloy, 1910), I, 586. 1 *British and Foreign State Papers* I, 779.

[5] Shown, sometimes as large as Isle Royale and southeast of it, on the early maps, including that of Mitchell (London, 1755), which also had a Maurepas Island and a Pontchartrain Island in the northeast part of Lake Superior.

[6] Ratifications exchanged at London, Oct. 28, 1795. 8 Stat. L. 116. *U. S. Treaty Series*, No. 105. *Treaties of the U. S.* (Malloy, 1910), I, 590. *For. Aff.*, VII (1929), 283.

that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of the said treaty.

Art. 5. Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described; that question shall be referred to the final decision of commissioners. . . . The said Commissioners shall, by a declaration, under their hands and seals, decide what river is the river St. Croix, intended by the treaty. The said declaration shall contain a description of the said river, and shall particularize the latitude and longitude of its mouth and of its source. . . . Both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called into question, or made the subject of dispute or difference between them.

An explanatory article signed at London, March 15, 1798,[7] provided that the commissioners appointed under the fifth Article of the 1794 treaty should not be obliged to particularize, in their description, the latitude and longitude of the source of the river which they found to be the one truly intended in the Treaty of Peace of 1783 under the name of the river St. Croix but might describe the river in such other manner as they might judge expedient.

After the War of 1812, which Great Britain insisted terminated the treaties of 1782, 1783, and 1794, with the additional articles, and the United States said did not, the Treaty of Ghent for peace and amity concluded December 24, 1814,[8] provided that two commissioners, and if they differed some friendly sovereign or state, should decide (Article 4) conflicting claims under Article 2 of the Treaty of 1783, as to whether or not several islands in the Bay of Passamaquoddy and the Island of Grand Manan in the Bay of Fundy had been within the limits of Nova Scotia previous to that treaty; (Article 5) that they should determine the location of the point of the highlands due north from the source of the river St. Croix and of the northwesternmost head of the Connecticut River, and survey and mark these points and the boundary from the source of the river St. Croix through these points down the middle of the Connecticut River to the 45th degree of north latitude and thence due west to the river Iroquois or Cataraquy; that they should fix and determine (Article 6) the boundary through the middle of the river Iroquois or Cataraquy, middle of Lake Superior, water communication with Lake Erie, middle of Lake Erie, middle of Lake Huron, and water communication with Lake Superior and to which party the several islands lying in those waters belonged; and (Article 7) that they should fix and determine the boundary from the water communication between Lakes Huron and Superior to the most northwestern point of the Lake of the Woods and decide to which party the several

[7] 8 Stat. L. 131. *U. S. Treaty Series*, No. 107. *Treaties of the U. S.* (Malloy, 1910), I, 609.

[8] Ratifications exchanged, Feb. 17, 1815. 8 Stat. L. 218. *U. S. Treaty Series*, No. 109. *Treaties of the U. S.* (Malloy, 1910), I, 612. *Treaties Affecting Canada* (Ottawa, 1927), 1. 2 *British and Foreign State Papers* 357.

islands lying in the waters forming the boundary belonged. A convention signed at London, October 20, 1818,[9] provided:

Art. 2. It is agreed that a line drawn from the most northwestern point of the Lake of the Woods, along the 49th parallel of north latitude, or, if the said point shall not be in the 49th parallel of north latitude, then that a line drawn from the said point due north or south as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel shall be the line of demarcation between the territories of the United States, and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territories of His Britannic Majesty, from the Lake of the Woods to the Stony Mountains.

Art. 3. It is agreed, that any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of 10 years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two Powers: it being well understood, that this agreement is not to be construed to the prejudice of any claim, which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences amongst themselves.

The provisions of Article 3 were by a convention signed at London, August 6, 1827,[10] (Article 1) indefinitely extended and continued in force (Article 2) until twelve months after notice by one party to the other of intention to annul and abrogate them, after October 20, 1828. It was further provided that:

Art. 3. Nothing contained in this convention, or in the third article of the convention of the 20th of October, 1818, hereby continued in force, shall be construed to impair, or in any manner affect, the claims which either of the contracting parties may have to any part of the country westward of the Stoney or Rocky Mountains.

The Webster-Ashburton Treaty signed at Washington on August 9, 1842,[11] settled the boundary lines (Article 1) from the source of the river St. Croix (Maine) to the St. Lawrence River and (Article 2) from a point in the Neebish Channel, near Muddy Lake (Michigan) to the Rocky Mountains. A treaty signed at Washington, June 15, 1846,[12] provided:

Art. 1. From the point on the 49th parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain termi-

[9] Ratifications exchanged at Washington, Jan. 30, 1819. 8 Stat. L. 248. *U. S. Treaty Series*, No. 112. *Treaties of the U. S.* (Malloy, 1910), I, 631. *Treaties Affecting Canada* (Ottawa, 1927), 15. 6 *British and Foreign State Papers* 3.

[10] Ratifications exchanged at London, April 2, 1828. 8 Stat. L. 360. *U. S. Treaty Series*, No. 118. *Treaties of the U. S.* (Malloy, 1910), I, 643. *Treaties Affecting Canada* (Ottawa, 1927), 17. 14 *British and Foreign State Papers* 975.

[11] Ratifications exchanged at London, Oct. 13, 1842. 8 Stat. L. 572. *U. S. Treaty Series*, No. 119. *Treaties of the U. S.* (Malloy, 1910), I, 650. *Treaties Affecting Canada* (Ottawa, 1927), 18. 30 *British and Foreign State Papers* 360. P. E. Corbett, *The Settlement of Canadian-American Disputes* (New Haven, 1937), 9, 12.

[12] Ratifications exchanged at London, July 17, 1846. 9 Stat. L. 869. *U. S. Treaty Series*, No. 120. *Treaties of the U. S.* (Malloy, 1910), I, 656. *Treaties Affecting Canada* (Ottawa, 1927), 28. 34 *British and Foreign State Papers* 14.

nates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said 49th parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island; and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and straits, south of the 49th parallel of north latitude, remain free and open to both parties.

Art. 2. [From the intersection of the 49th parallel of N latitude with the great northern branch of the Columbia river, the navigation of that branch shall be free and open to the Hudson's Bay Company and to all British subjects trading with the same, to the main stream and down the main stream to the ocean.]

Art. 3. In the future appropriation of the territory south of the 49th parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

This was the first agreement touching the boundary all the way to the Pacific Ocean. Commissioners were appointed by the two nations to survey and mark the boundary as described in Article 1, and the seven maps prepared by them were approved by a joint declaration signed in Washington, February 24, 1870.[13] The Root-Bryce Treaty signed at Washington on April 11, 1908,[14] providing for the more complete definition and demarcation of the entire line from the Atlantic to the Pacific, described it in detail in eight sections, and provided for the appointment of a joint commission of two expert geographers or surveyors to locate and mark the whole boundary, recovering and restoring original marks and monuments where possible, stipulating that

> the line so defined and laid down shall be taken and deemed to be the international boundary.

By proclamation of June 15, 1908,[15] President Theodore Roosevelt set apart as a public reservation all unpatented public lands of the United States within sixty feet of the boundary line with Canada. By a treaty signed at Washington, January 11, 1909,[16] it was agreed that all boundary waters (these being defined as all waters of lakes, rivers, and connecting waterways along which the international boundary passes) should (Article 1) be free and open for navigation,

[13] *Treaties of the U. S.* (Malloy, 1910), I, 658. *Treaties Affecting Canada* (Ottawa, 1927), 28. 63 *British and Foreign State Papers* 1053.

[14] Ratifications exchanged at Washington, June 4, 1908. 35 Stat. L. II, 2003. *U. S. Treaty Series*, No. 498. *Treaties of the U. S.* (Malloy, 1910), I, 815. *Treaties Affecting Canada* (Ottawa, 1927), 299. 101 *British and Foreign State Papers* 210. *U. S. For. Rel.*, 1908, p. 384. *British Treaty Series*, 18 (1908). *Amer. J. Int. Law*, II (1908), 634; II, Supp., 306. Pettibone *v* Cook County, Minn. (1940), 31 F. Supp., 881.

[15] 35 Stat. L. II, 2189. *Amer. J. Int. Law*, II (1908), Supp., 321.

[16] Ratifications exchanged at Washington, May 5, 1910. 36 Stat. L. II, 2448. *U. S. Treaty Series*, No. 548. *Treaties of the U. S.* (Malloy, 1923), III, 2607. *Treaties Affecting Canada* (Ottawa, 1927), 312. *British Treaty Series*, 23 (1910). *Amer. J. Int. Law*, IV (1910), 668, IV, Supp., 239; VI (1912), 191, VI, Supp., 82; XXII (1928), 292; XXVII (1933), 498; XXXII (1938), 488–518. *For. Aff.*, X (1932), 428. P. E. Corbett, *op. cit. supra*, Note 11; 50, 116.

(Article 3) should not be subject to new uses, obstructions, or diversions [17] affecting their natural level or flow, (Article 4) should not be polluted, and (Article 8) should be under the control of an international joint commission of six. A treaty signed at Washington, February 24, 1925,[18] agreed that (Article 1) the northwesternmost point of the Lake of the Woods should be taken to be at 49°23′04.49″ N latitude and 95°09′11.61″ W longitude; that (Article 2) the lines along the 49° parallel of N latitude should be straight lines, between monuments averaging 1⅓ miles apart, instead of having the curvature of a parallel, involving no actual deviation over 1.8 feet; that (Article 3) one additional course should be added in Grand Manan Channel, to the high seas; and that (Article 4) the commissioners under the 1908 treaty might inspect the line from time to time and repair, relocate and rebuild monuments, and establish additional monuments and buoys, reporting to both governments at least once every year. By Article 1 the United States lost about two and one half acres of water area and by Article 2 the United States gained between thirty and thirty-five acres of land. This was the last of the agreements affecting the line generally. Adjustments at definite points will be considered in connection with the state on whose northern edge they lie, taken in order from east to west. Conventions concerning the ocean fisheries, the navigation of the St. Lawrence and the Great Lakes, and numerous international waterway plans and agreements which have been made with Great Britain or directly with Canada do not fall within the scope of our subject. An air and naval base on Newfoundland was one of the eight sites[18a] to be leased to the United States for ninety-nine years under the agreement with Great Britain announced on August 20, 1940; this was subsequently fixed at Argentia Peninsula, two square miles south of Little Placentia harbor, twenty-two acres on the south side of St. John's harbor, and approximately one hundred acres north of Quidi Vidi Lake.

Maine

Since 1764 Nova Scotia and Massachusetts had been in dispute as to which river was the true St. Croix, a river of which name had been designated as early as 1621 as the northern boundary of a tract on the mainland granted at the direc-

[17] Diversion of waters of Lake Michigan by the Chicago Drainage Canal, opened in 1900. Missouri *v* Illinois (1901), 180 U. S. 208, 21 S. Ct. 331, 45 L. Ed. 497; (1906), 200 U. S. 496, 26 S. Ct. 268, 50 L. Ed. 572; (1906), 202 U. S. 598, 26 S. Ct. 713, 50 L. Ed. 1160. *Harvard Law Review*, XXI (1907), 27; XXXV (1921), 176. Sanitary District of Chicago *v.* United States (1925), 266 U. S. 405, 45 S. Ct. 176, 69 L. Ed. 352. Wisconsin *v.* Illinois (1929), 278 U. S. 367, 49 S. Ct. 163, 73 L. Ed. 426; (1930), 281 U. S. 179, 50 S. Ct. 266, 74 L. Ed. 799; (1933), 289 U. S. 395, 53 S. Ct. 671, 77 L. Ed. 1283. *Amer. J. Int. Law*, XXIII (1929), 307–328. *British Year Book of Int. Law*, X (1929), 144–157. P. E. Corbett, *op. cit. supra*, Note 11, 59, 117, 121.

[18] Ratifications exchanged at Washington, July 17, 1925. 44 Stat. L. III, 2102. *U. S. Treaty Series*, No. 720. *Treaties of the U. S.* (Malloy, 1938), IV, 3988. *Treaties Affecting Canada* (Ottawa, 1927), 515. 121 *British and Foreign State Papers* 933. *British Treaty Series*, 37 (1925). *Amer. J. Int. Law*, XIX (1925), 780, XIX, Supp., 122. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XVII (1927), 912.

[18a] *Amer. J. Int. Law*, XXXIV (1940), 569.

tion of James I by the Plymouth Company to William Alexander, Earl of Stirling. In 1784 New Brunswick [19] succeeded to the claims of Nova Scotia, and in 1820 Maine to those of Massachusetts. The two commissioners under the Jay Treaty of 1794 with Great Britain, as authorized by the explanatory article of 1798, on October 25, 1798,[20] declared that:

> the river truly intended under the name of the River Saint Croix . . . that is to say, the mouth of the river is in Passamaquaddy Bay at a point of land called Joe's Point, about one mile northward from the northern part of Saint Andrew's Island, and in 45°05′05″ N latitude, 67°12′30″ W longitude. . . . The course of the said river up from it's said mouth is northerly to a point of land called The Devil's Head, then turning the said point is westerly to where it divides into two streams, the one coming from the westward, and the other coming from the northward, having the Indian name of Chiputnaticook or Chibnitcook, . . . then up the said stream so coming from the northward to it's source. . . . And the course and distance of the said source from the Island . . . at the confluence of the above mentioned two streams . . . is N 5° about 15′ W. . . . about 48.25 miles.

This designated the river Schoodiac, as claimed by Great Britain, and not the Magaguadavic as had been claimed by the United States, to be the St. Croix intended in 1794. The commissioners erected a monument at the source described.

The joint commissioners under the fourth article of the Treaty of Ghent in 1814 with Great Britain decided on November 24, 1817,[21] that Moose, Dudley (now Treat), and Frederick (now Dudley) Islands in Passamaquoddy Bay, part of the Bay of Fundy, belonged to the United States and Campo Bello, Deer, Indian, and all the other islands in Passamaquoddy Bay and the Island of Grand Manan (twenty-two by nine miles) in the Bay of Fundy, belonged to Great Britain. The joint commissioners under the fifth article of the same treaty met on September 23, 1816, found they could not agree, and held their last meeting on April 13, 1822.[22] By a convention signed at London, September 29, 1827,[23] it was agreed to submit the question of the boundary from the source of the river St. Croix to the northwesternmost head of the Connecticut River to the arbitration of a friendly sovereign; and on January 12, 1829, William I, king of the Netherlands, was agreed on as arbiter. From the source of the St. Croix the United States wished the line to run 140 miles due north to a ridge claimed to be the intended highlands and watershed, while the British would run only 40 miles

[19] 40 *British and Foreign State Papers* 850; 44 *ibid.* 685; 47 *ibid.* 523.

[20] *Treaties and Other Int. Acts of the U. S.* (Miller, Washington, 1931), II, 430. *Int. Arbitrations* (Moore, 1898), I, 1. *Int. Adjudications* (Moore, 1929–30), Mod. Ser., I and II. P. E. Corbett, *op. cit. supra*, Note 11; 7.

[21] 8 Stat. L. 250. *U. S. Treaty Series*, No. 111. *Treaties of the U. S.* (Malloy, 1910), I, 619. *Treaties and Other Int. Acts of the U. S.* (Miller, Washington, 1931), II, 655. *Treaties Affecting Canada* (Ottawa, 1927), 7. 5 *British and Foreign State Papers* 198. *Int. Arbitrations* (Moore, 1898), I, 45. *Int. Adjudications* (Moore, 1933), Mod. Ser., VI, P. E. Corbett, *op. cit. supra*, Note 11; 9. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 446.

[22] *Int. Arbitrations* (Moore, 1898), I, 65.

[23] 8 Stat. L. 362. *Treaties of the U. S.* (Malloy, 1910), I, 646. 14 *British and Foreign State Papers* 1004. *Int. Arbitrations* (Moore, 1898), I, 85.

to near Mars Hill and then turn west, the difference involving an area of 12,027 square miles. The king of the Netherlands made his award on January 10, 1831,[24] drawing a compromise line which gave the United States 7,015 square miles and Great Britain 5,012 square miles. Maine protested bitterly against the decision, especially by legislative resolution of January 19, 1832.[25] President Andrew Jackson left the matter of acceptance of the award to the United States Senate which in June 1832,[26] recognizing it to be a rule of United States constitutional law that the Federal government cannot change the boundary of a state without its consent, refused to assent to the award or to provide for carrying it into effect; and accordingly the award was thereupon dropped by Great Britain. Negotiations continued, but numerous collisions, especially of trappers and loggers, occurred in the disputed territory, and at times feelings ran high on both sides, even rising to an outbreak known as the "Restook War" in 1838–39 in the district bordering on the river Aroostook. Maine in January–March 1839 authorized a loan of $800,000 to be used for the defense of her public lands,[27] and Congress in March 1839 passed a bill authorizing President Martin Van Buren to call out the militia for six months and to accept fifty thousand volunteers, placing at his disposal an extra credit of $10,000,000.[28] The boundary was finally determined by the Webster-Ashburton Treaty of 1842 [29] which provided:

Art. 1. Beginning at the monument at the source of the river St. Croix as designated and agreed to by the Commissioners under the fifth article of the treaty of 1794, between the Governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof; thence, up the middle of the main channel of the said river St. John, to the mouth of the river St. Francis; thence, up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be 10 miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than 7 miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river Saint Lawrence from those which fall into the river Saint John, then the said point shall be made to recede down the said northwest branch of the river St. John, to a point 7 miles in a straight line from the said summit or crest; thence, in a straight line, in a course about S 8° W, to the point where the parallel of latitude of 46°25′

[24] 18 *British and Foreign State Papers* 1249. Moore, *Dig. Int. Law* (Washington, 1906), VII, 59. *Int. Arbitrations* (Moore, 1898), I, 119.

[25] Maine, Resolves (1831), Chap. 80, 242–277; (1832), Chap. 1, 327–345, 449–496; (1838), Chap. 89, 343, 374–438; (1839), Chap. 113, 113; (1840), Chap. 94, 226, Chap. 198, 531–639.

[26] By a vote of 35 to 8.

[27] Maine, Resolves (1839), Chap. 16, 35; Chap. 23, 38; Chap. 33, 42; Chap. 57, 54.

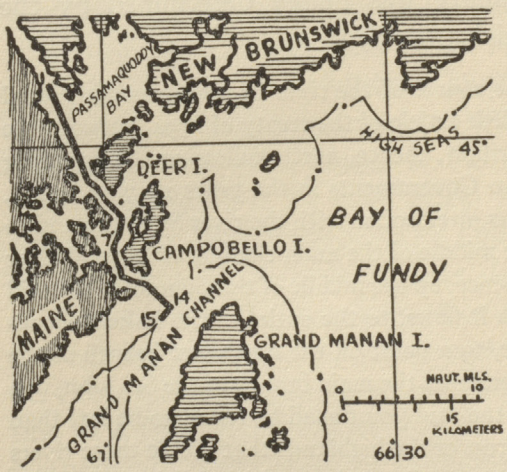
[28] Act of March 3, 1839, c. 89; 5 Stat. L. 355. Cf. Act of June 13, 1842, c. 39; 5 Stat. L. 490.

[29] See Note 11, *supra*.

north intersects the southwest branch of the St. John's; thence, southerly, by the said branch, to the source thereof in the highlands at the Metjjarmette portage; thence, down along the said highlands which divide the waters which empty themselves into the river Saint Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence, down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British province of Canada on the other; and from said point of intersection, west, along the said dividing line, as heretofore known and understood, to the Iroquois or St. Lawrence river.

Art. 6. [Two Commissioners shall proceed to mark the line from the source of the St. Croix to the river St. John, shall trace on maps the dividing line along the St. John to the outlet of Lake Pohenagamook, and mark the line from the outlet of that Lake to the St. Lawrence river.]

This gave the United States nearly a thousand square miles less than the rejected award of 1831, though still a little more than one-half of the territory originally in dispute. The commissioners met in Bangor, Maine, on May 1, 1843, and after tracing, marking, and mapping the line for its entire length, signed their report at Washington on June 28, 1847.[30] In a convention for delimiting boundaries not permanently marked, signed at Washington, July 22, 1892,[31] it was agreed that (Article 2) the parties would appoint two commissioners to determine upon a method of more accurately marking the boundary line between the two countries in the waters of Passamaquoddy Bay in front of and adjacent to Eastport, Maine, and to place buoys or fix such other boundary marks as they might determine to be necessary. A treaty signed at Washington, May 21, 1910,[32] located the boundary from a point in Passamaquoddy Bay, as defined in Article 1 of the Treaty of 1908, lying between Treat Island and Friar Head, by seven connected straight lines, described by direction and distances, to the middle of Grand Manan Channel. Article 3 of the Treaty of 1925,



[30] *Treaties Affecting Canada* (Ottawa, 1927), 23. 57 *British and Foreign State Papers* 823.

[31] Ratifications exchanged at Washington, Aug. 23, 1892. 27 Stat. L. 955. *U. S. Treaty Series*, No. 142. *Treaties of the U. S.* (Malloy, 1910), I, 763. *Treaties Affecting Canada* (Ottawa, 1927), 95. 84 *British and Foreign State Papers* 70.

[32] Ratifications exchanged at Washington, Aug. 20, 1910. 36 Stat. L. II, 2477. *U. S. Treaty Series*, No. 551. *Treaties of the U. S.* (Malloy, 1923), III, 2616. *Treaties Affecting Canada* (Ottawa, 1927), 352. *British Treaty Series*, 22 (1910).

reciting that it had been found by survey executed pursuant to the Treaty of 1910 that the terminus of the boundary line defined in that treaty at the middle of Grand Manan Channel was less than three nautical miles distant both from the shore line of Grand Manan Island (Canada) and of the state of Maine, and that there was a small zone of waters of controvertible jurisdiction in Grand Manan Channel between said terminus and the high seas, added an additional course,

> from the terminus of the boundary line defined by the said Treaty of May 21, 1910, S 34°42′ W for a distance of 2,383 meters (1.48 miles) through the middle of Grand Manan Channel to the high seas.

By this provision Canada gained about nine acres of water area previously controverted.

The Canadian boundary with Maine is thus settled for 610.1 miles from the Atlantic Ocean to New Hampshire; northwest in Passamaquoddy Bay, 25.2 miles; with New Brunswick up the St. Croix River to its source, 129.4 miles; nearly along the meridian north, 77.6 miles; northwestward up the St. Johns River, 72 miles; up the St. Francis River, 42.6 miles, with the province of Quebec (to the extreme north point at 47°27′35.8″ N latitude, 69°13′30.4″ W longitude); by a diagonal line southwest, 83.6 miles; up the southwest branch of St. Johns River to the highlands, 38.4 miles, and along the highlands to the northeast corner of New Hampshire, 141.3 miles. West Quoddy Head, at 44°49′ N latitude, 66°57′ W longitude, near Eastport, is the easternmost point of the continental United States.

New Hampshire

The Webster-Ashburton Treaty of 1842 ran the last course of the boundary with Maine (Article 1) along the highlands which divide the waters which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude. Title to a region north of the 45th parallel in the vicinity of Buck, Connecticut, Second, and Third lakes was in dispute for many years between New Hampshire and Canada, and in 1829 the settlers organized an independent state called the Indian Stream Territory. They governed themselves locally until after the Indian Stream War in 1835, when New Hampshire took charge of the area. The line between Maine and New Hampshire had been fixed by commissioners in 1737 and confirmed by George II on August 5, 1740, but difficulties

having arisen in 1827, commissioners from the two states agreed in a report of November 13, 1828, approved by both legislatures in 1829, and the line was surveyed in 1858 and 1874 and retraced and remarked in 1927–29. The northern end of the line, at the intersection of the Maine, New Hampshire, and province of Quebec boundaries, is at an iron post known as the Crown Monument (now Mark 475 of the international boundary survey of 1915) at 45°18′20″ N latitude, 71°05′04.4″ W longitude; and from that point the international boundary runs,

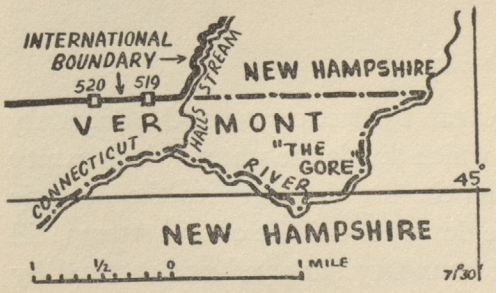
by an irregular line along the divide to the head of Hall's Stream and down the middle of that stream to a line established by Valentine and Collins previous to 1774 as the 45th parallel of latitude.

This line ends in the middle of Hall's Stream at 45°00′48.7″ N latitude, 71°30′05.7″ W longitude.

The Canadian boundary with New Hampshire is thus settled for 59.9 miles; with the province of Quebec, from the west corner of Maine along the highlands to the source of Hall's Stream, 33.3 miles; and down Hall's Stream south to the Vermont line 26.6 miles.

Vermont

The Webster-Ashburton Treaty of 1842 ran the last course of the first section of the boundary (Article 1) from the intersection of the middle of Hall's Stream with the line surveyed by Valentine and Collins as the 45th degree of north latitude west along the dividing line, as theretofore known and understood, to the Iroquois or St. Lawrence River. The line marked by Valentine and Collins surveying eastward from the eastern shore of Lake Champlain in 1772 has been found to be for its entire length north of the 45th parallel, from 0.25 to 1.1 miles, but it was accepted as the true boundary by the 1842 treaty. The international corner, where the line between New Hampshire and Quebec coming from the north strikes the Vermont line, is not the northeast corner of Vermont as it is usually shown on maps, for the New Hampshire–Vermont line actually runs from that point east about 1.75 miles to the Connecticut River,[33] leaving to Vermont a small area between the parallel and the Connecticut River, known as the Gore. Ver-



[33] The New Hampshire-Vermont line runs along normal low water mark on the west bank of the Connecticut River. Vermont *v.* New Hampshire (1933), 289 U. S. 593, 53 S. Ct. 708, 77 L. Ed. 1392; (1934), 290 U. S. 579, 54 S. Ct. 265, 78 L. Ed. 513. *Amer. J. Int. Law*, XXVII (1933), 506.

mont, either as formed from the territory of New York or as a seceded portion independent since 1777, was admitted as a state in 1791. From the international corner, at 45°18′20″ N latitude, 71°05′04.4″ W longitude, in the middle of Hall's Stream, the Vermont–Canadian line runs west overland, crossing Lake Memphremagog, taking a short diagonal to the northwest at about 72°30′ W longitude and crossing Missisquoi Bay, at the eastern side of the foot of Lake Champlain, to the middle of the main channel of Lake Champlain, in its outlet to the Richelieu River, at 45°00′38.9″ N latitude, 73°20′38.9″ W longitude, the northwest corner of Vermont and the northeast corner of New York. The Canadian boundary with Vermont is thus settled with the province of Quebec overland in three courses for 90.4 miles, from New Hampshire to New York.

New York

The last course of the first section (Article 1) of the boundary in the Webster-Ashburton Treaty of 1842 ran from Hall's Stream along the old boundary line on the supposed 45th degree of north latitude across Lake Champlain to the Iroquois or St. Lawrence River. The joint commissioners under the sixth article [34] of the Treaty of Ghent of 1814 in a final declaration of June 18, 1822, ran the boundary from a stone monument erected by Andrew Ellicott in 1817 on the south bank of the river Iroquois or Cataraqua (then called the St. Lawrence) at the point at which the 45th parallel of north latitude strikes that river, N 35°45′ W into the river, at right angles with the southern shore, to a point one hundred yards south of Cornwall Island; thence upstream along the middle of the river, south of Cornwall, Sheik's, one Cat, Nut, Cousson or Tussin, Presque, three Gallop, Duck, Drummond, Sheep, Grenadier, Rowe's, Hickory, Grand or Long, the Ducks, and several small numbered islands and north of Barnhart's, Lower Sault, Upper Sault or Baxter's, the other Cat, Chrystler's, Goose Neck, Dry or Smuggler's, Rapid Platt, ten Gallop, Tick, Tibbets, Chimney, Gull, Bluff, Well's, Grindstone, Carlton, Grenadier, Fox, Stony, another Gallop, and several small numbered islands in the river and in Lake Ontario to the middle of that lake; thence westerly along the middle of that lake to a point opposite the mouth of the Niagara River; thence up the middle of that river to the Great Falls, up the falls through the point of the Horseshoe, keeping to the west of Iris or Goat Island, and following the bends of the river to enter the strait between Navy and Grand Islands; along the middle of that strait to the head of Navy Island; to the west and south of and near to Grand and Beaver Islands and west of Strawberry, Squaw, and Bird

[34] *Treaties of the U. S.* (Malloy, 1910), I, 620. *Treaties Affecting Canada* (Ottawa, 1927), 7. *Int. Arbitrations* (Moore, 1898), I, 162. 9 *British and Foreign State Papers* 791.

Islands to Lake Erie; thence southerly and westerly along the middle of Lake Erie to enter the passage immediately south of Middle Island. The survey of the line west from Lake Champlain was begun by Collins and Sauthier in 1773 and completed by Collins in 1774, and although the line is at places half a mile north of the 45th parallel, which it crosses twice west of Rouses Point, it was accepted as the true boundary by the 1842 treaty.

At a conference at the British Foreign Office in London on December 9, 1850,[35] concerning the dangers to commerce on Lake Erie, particularly at Buffalo near the entrance of the Niagara River, and that passing through the Welland Canal,[36] Great Britain agreed to cede to the United States so much of submerged Horseshoe Reef (less than one acre) in Canadian waters as might be necessary for a lighthouse to be erected and maintained by the United States, no fortification to be erected on the reef. The United States approved the arrangement on January 17, 1851, and the lighthouse was erected in 1856, but discontinued in 1919 because of powerful modern lighting from the mainland. By the Treaty of 1908 the boundary was shifted to the west of Horseshoe Reef. The Canadian boundary with New York is thus settled for 445.2 miles from Vermont, in the middle of the main channel of Lake Champlain, to the Pennsylvania line in the middle of Lake Erie; with the province of Quebec westward overland 64.5 miles to the St. Lawrence, and then [37] with the province of Ontario (whose boundary line of 1,715 miles with the United States is nearly all by waterways) southwest by water 380.7 miles, up the St. Lawrence, through the middle of Lake Ontario (193 miles long in all), up the Niagara River (36 miles) and through the middle of Lake Erie (241 miles long in all), of which lake 4,950 square miles are assigned to Canada and 4,990 square miles to the United States.

Pennsylvania

The joint commissioners under the sixth article of the Treaty of Ghent of 1814 [38] in a final declaration of June 18, 1822, ran the boundary from the entrance of the Niagara River southerly and westerly along the middle of Lake Erie in a direction to enter the passage immediately south of Middle Island, in the western part of that lake. New York, which had originally claimed territory extending

[35] *Treaties of the U. S.* (Malloy, 1910), I, 663. *Treaties Affecting Canada* (Ottawa, 1927), 33. 63 *British and Foreign State Papers* 890.

[36] The original Welland Canal (Canada), with twenty-five lift locks and a 14-foot draught, ran from Port Colborne on Lake Erie mostly down the course of the small Welland River 26.75 miles to Port Dalhousie on Lake Ontario. The new canal, with eight locks, a total lift of 325.5 feet and a 25-foot draught, runs from Port Colborne in an enlargement of the old canal, and by a new route for the northern portion, twenty-five miles to Port Weller on Lake Ontario; begun in 1913 and officially opened Aug. 6, 1932.

[37] Canada west of the Ottawa River was known as Upper Canada from 1792 to 1867.

[38] See Note 34, *supra*.

indefinitely westward, ceded to the United States in 1781 all its rights to land west of the meridian through the west end of Lake Ontario from the 45° parallel to the Pennsylvania line, supposed to be the 42° parallel. Andrew Ellicott in 1790 ran a traverse line from the west end of Lake Ontario east along the lake shore to the mouth of the Niagara River, south up and across that river to its entrance on Lake Erie, and southwest along the south shore of Lake Erie to a point he computed as having the same longitude as his starting point, where he set up a monument. The line taken as the 42° parallel, for the south boundary of New York and the north boundary of Pennsylvania, ran into Lake Erie just short of the north end of the Pennsylvania–Ohio line at 80°31′40″ W longitude, giving Pennsylvania a shore line of only about a mile on Lake Erie. To afford more water front, the United States in 1792 sold to Pennsylvania for $151,640.25 the "Erie Triangle" of about 324 square miles (on land), which had been part of the 1781 cession from New York, bounded east a little over 18 miles by the meridian of the west end of Lake Ontario, south about 36 miles by the Pennsylvania line at the supposed 42° parallel, and northwest by the middle of Lake Erie, which was the international boundary line under the Treaty of Ghent of 1814. In 1869 a granite monument was placed 440 feet south of the lake shore, at 42°15′58.4″ N latitude, 79°45′44.9″ W longitude, marked "Meridian of the West End of Lake Ontario," repaired in 1885. The western boundary of Pennsylvania was agreed with Virginia in 1779 to be the meridian 5° west of the Delaware River, and this meridian was surveyed and marked in 1785 from the north side of the Ohio River to Lake Erie. Virginia ceded her claims to lands west of Pennsylvania to the United States in 1784, and when Ohio was admitted in 1803 she succeeded to this boundary. The line was resurveyed and remarked from 1878 to 1882, and a granite monument was erected 2,400 feet south of the edge of Lake Erie, at 41°58′15.31″ N latitude, 80°31′10.40″ W longitude. The Canadian boundary with Pennsylvania is thus settled for 41.5 miles along the middle of Lake Erie (57 miles wide), with the province of Ontario on the other side, from the imaginary corner of New York southwest to the imaginary corner of Ohio, 28 miles or less off the Erie County shore.

Ohio

The joint commissioners under the sixth article of the Treaty of Ghent of 1814[39] in a final declaration of June 18, 1822, ran the boundary line along the middle of Lake Erie in a direction to enter the passage immediately south of

[39] See Note 34, *supra*.

Middle Island, one of the easternmost of the group of islands in the western part of the lake; thence along that passage north of Cunningham's, three Bass, and Western Sister Islands and south of Hen and Chickens, Eastern and Middle Sisters Islands, to the middle of the mouth of the Detroit River. The east line, as inherited from the Virginia agreement of 1779 with Pennsylvania, was the meridian 5° west of the Delaware River, surveyed and monumented in 1878–82 at 80°31′10.40″ W longitude. Ohio had a long and bitter dispute with Michigan over the line between them, from Lake Erie across the Southern Peninsula towards Lake Michigan, which was not settled till 1836, as surveyed in 1817, on the parallel of the southern extremity of Lake Michigan eastward from the meridian of the mouth of the Great Miami River (where it empties into the Ohio) to the most northerly cape of Maumee Bay and thence northeast to the international line. The line was resurveyed in 1915, and Post No. 71 was set about nine hundred feet from the shore of Maumee Bay, at 41°43′56.63″ N latitude, 83°27′16.97″ W longitude. The Canadian boundary with Ohio is thus settled for 146.2 miles in Lake Erie, with the province of Ontario on the other side, from the imaginary corner of Pennsylvania southwest to the most southerly point of the entire Canadian line, at about 41°37′ N latitude, and then northwest to the imaginary corner of Michigan, a little west of Middle Sister Island, Canada.

Michigan

The joint commissioners under the sixth article of the Treaty of Ghent of 1814[40] in a final declaration of June 18, 1822, ran the boundary line in Lake Erie south of Middle Sister Island to the middle of the mouth of the Detroit River, up the channel west of Bois-Blanc and east of Sugar, Fox, and Stony Islands, west of Fighting or Great Turkey Island, along the middle of the river, southeast of Hog Island and northwest of Isle a la Pache, through the middle of Lake St. Clair, along the middle of Old Ship Channel of the river St. Clair, between Squirrel Island on the southeast and Herson's Island on the northwest, along the middle of the river St. Clair, to the west of Belle Riviere Isle and Isle aux Cerfs, through the middle of Lake Huron, through the middle of the passage between Drummond's Island on the west and Little Manitou Island on the east, northerly and westerly around Drummond's Island, up the passage between St. Joseph's Island and the American shore, to the north and east of Isle a la Crosse to a line across the river at the head of St. Joseph's Island and at the foot of the Neebish Rapids. The joint commissioners under the seventh article of the Treaty of

[40] See Note 34, *supra*. Detroit River: United States *v.* Rodgers (1893), 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071.

Ghent of 1814,[41] to fix the line from the water communication between Lake Huron and Lake Superior to the most northwestern point of the Lake of the Woods, met on June 22, 1822, found they could not agree, and held their last meeting on December 24, 1827.[42] Michigan, consisting of the Southern Peninsula, which was part of Indiana Territory in 1805, and the Northern Peninsula, being so much of the Illinois Territory added in 1818 as did not become Wisconsin Territory in 1836, was admitted as a state in 1837, bounded:

with the boundary line of Ohio until it intersects the boundary line between the United States and Canada in Lake Erie; thence with the said boundary line between the United States and Canada, through the Detroit river, Lake Huron, and Lake Superior, to a point where the said line last touches Lake Superior; thence in a direct line through Lake Superior to the mouth of the Montreal river [and thence southeast with Wisconsin back to Green Bay and Lake Michigan].

The Webster-Ashburton Treaty of 1842 [43] ran the boundary (Article 2) from where the commissioners under the sixth article ended, at a point in the Neebish Channel near Muddy Lake, along the ship-channel between St. Joseph's and St. Tammany Islands, eastwardly and northerly around the lower end of St. George's or Sugar Island, along the middle of the channel which divides St. George's from St. Joseph's Island, up the east Neebish Channel, through the middle of Lake George, west of Jonas' Island into St. Marys River about one mile above St. George's Island, through the river St. Mary and Lake Superior to a point north of Ile Royale, one hundred yards north and east of Ile Chapeau, and southwesterly through the middle of the sound between Ile Royale and the northwestern main land to the mouth of Pigeon River. The Wisconsin line in Lake Superior is described in the act of 1836 creating the territory of Wisconsin as, on the east,

the main channel of the Montreal river, to its mouth; thence with a direct line across Lake Superior, to where the territorial line of the United States last touches said lake northwest; thence on the north, with the said territorial line, to the White-earth river; on the west, by a line from the said boundary line following down the middle of the main channel of White-earth river.

The Wisconsin enabling act of 1846 described the boundary as from

the main channel of the Montreal river to the middle of Lake Superior; thence through the center of Lake Superior to the mouth of St. Louis river.

The act of 1849 creating the Territory of Minnesota described its boundary as running

east and south of east along the boundary line between the possessions of the United States and Great Britain to Lake Superior; thence in a straight line to the northernmost point of the

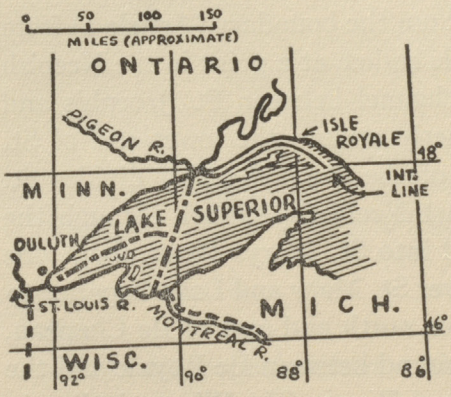
[41] See Note 34, *supra*. [42] *Int. Arbitrations* (Moore, 1898), I, 171. [43] See Note 11, *supra*.

State of Wisconsin in Lake Superior; thence along the western boundary line of said State of Wisconsin [southward to the Mississippi river],

and the act admitting Minnesota as a State in 1858 described the boundary as

following the boundary line of the State of Wisconsin until the same intersects the Saint Louis river; thence down said river to and through Lake Superior on the boundary line of Wisconsin and Michigan until it intersects the dividing line between the United States and the British Possessions; thence up Pigeon river, and following said dividing line.

These somewhat inconsistent descriptions probably result in running the northern boundary of Wisconsin (and the southeastern boundary of Minnesota) in Lake Superior, from the mouth of the St. Louis River [44] northeastward through the middle of Lake Superior perhaps one hundred miles to the middle point of the direct line from the place at which the international boundary line last touches Lake Superior to the mouth of the Montreal River, such direct line being the northwestern boundary of Michigan across Lake Superior. In any case, Wisconsin [45] cannot extend farther north or east than this point of intersection, at about 47°15′ N latitude, 90° W longitude. From there northeast some fifty miles through the lake to the international line at the mouth of Pigeon River, at about 48° N latitude, 89°40′ W longitude, Michigan bounds with Minnesota. In 1852 Michigan, with federal aid, built a ship canal around the Falls of St. Mary (Sault Ste. Marie) in St. Marys River near its entrance from Lake Superior, and in 1881 surrendered the canal to the United States.[46]



It was agreed by an exchange of notes between United States Acting Secretary of State Richard Rush and Charles Bagot, British minister, in Washington, April 28/29, 1817,[47] that the naval force to be maintained upon the American lakes by Great Britain and the United States should thenceforth (until six months

[44] Minnesota *v.* Wisconsin (1920), 252 U. S. 273, 40 S. Ct. 313, 64 L. Ed. 558; (1920), 254 U. S. 14, 41 S. Ct. 10, 65 L. Ed. 103; (1922), 258 U. S. 149, 42 S. Ct. 269, 66 L. Ed. 519.

[45] Michigan *v.* Wisconsin (1926), 270 U. S. 295, 46 S. Ct. 290, 70 L. Ed. 595; 272 U. S. 398, 47 S. Ct. 114, 71 L. Ed. 315. *Marq. Law Review*, X (1926), 159. Wisconsin *v.* Michigan (1935), 295 U. S. 455, 55 S. Ct. 786, 79 L. Ed. 1541; (1936), 297 U. S. 547, 56 S. Ct. 584, 80 L. Ed. 856. Mich. Sec., *Mich. Law Review*, I (1936), 102.

[46] United States *v.* Michigan (1903), 190 U. S. 379, 23 S. Ct. 742, 47 L. Ed. 1103.

[47] 8 Stat. L. 231; 11 Stat. L. 766; 18 Stat. L. II. 296. *U. S. Treaty Series*, No. 110½. *Treaties of the U. S.* (Malloy, 1910), I, 628. *Treaties and Other Int. Acts of the U. S.* (Miller, Washington, 1931). II, 645. *Treaties Affecting Canada* (Ottawa, 1927), 12. *American State Papers*, Class I, *For. Rel.* (Washington, 1834), IV, 202–207. 5 *British and Foreign State Papers* 1200.

after notice to annul) be confined on each side to vessels not over one hundred tons burden, armed with one eighteen-pound cannon: on Lake Ontario, one; on the Upper Lakes, two; on Lake Champlain, one. This agreement is still in force.

The Canadian boundary with Michigan is settled for 720.5 miles from the imaginary corner of Ohio in Lake Erie, with the province of Ontario, northward through the Detroit River (31 miles), Lake St. Clair and St. Clair River (40 miles) to Lake Huron (206 miles long in all), northwesterly through the middle of Lake Huron and then through St. Marys River (63 miles) to Lake Superior (350 miles long in all), and northwesterly in Lake Superior to the north of Isle Royale and towards the mouth of Pigeon River (56 miles) to the Minnesota line.

Minnesota

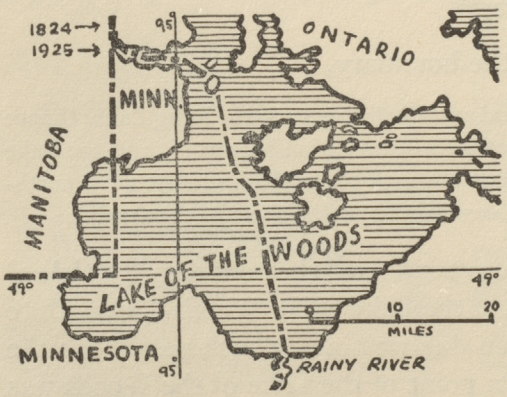
The treaties of 1782 and 1783 [48] ran the boundary,

> through Lake Superior northward of the isles Royal and Phelippeaux to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi.

The Convention of 1818 [49] as applied to the ground fixed the boundary (Article 2) as a line from the most northwestern point of the Lake of the Woods due south to the 49th parallel of north latitude and then due west along such parallel to the Rocky Mountains. The most northwestern point of the Lake of the Woods was fixed in 1824 by Dr. J. L. Tiarks and David Thompson in a swamp about 27.5 miles north of the 49th parallel, and a pile of logs was erected at a reference point about 4,600 feet farther south. The Webster-Ashburton Treaty of 1842 [50] ran the boundary (Article 2) from the mouth of Pigeon River up that river, through north and south Fowl Lakes, the lakes of the height of land between Lake Superior and the Lake of the Woods, along the water communication to Lake Saisaginaga, through that lake, Cypress Lake, Lac du Bois Blanc, Lac la Croix,[51] Little Vermillion Lake, and Lake Namecan, and the smaller lakes, straits, or streams connecting them, to that point in Lac la Pluie or Rainy Lake, at the Chaudière Falls, from which the commissioners traced the line to the most northwestern point of the Lake of the Woods; along that line to the most northwestern point, at 49°23′55″ N latitude, 95°14′38″ W longitude, thence due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. All water communications and all the usual portages along

[48] See Notes 2 and 4, *supra*.
[49] See Note 9, *supra*.
[50] See Note 11, *supra*.
[51] Islands; *U. S. For. Rel.*, 1895, I, 702–704.

the line from Lake Superior to the Lake of the Woods and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as then actually used, were to be free and open to the use of the citizens and subjects of both countries.[52] The Territory of Minnesota was organized in 1849 with a northern boundary from the middle of the main channel of the White-earth River east and south of east along the boundary line between the possessions of the United States and Great Britain to Lake Superior; and Minnesota was admitted as a state in 1858 with a northern boundary up Pigeon River following the dividing line between the United States and the British possessions to the center of the main channel of the Red River of the North. The remains of the log pile of 1824 were identified in 1872 by commissioners under the Convention of 1818, and they erected an iron monument near the site.[53] This iron monument was recovered in 1912 by commissioners, who reset it in concrete, and it is now boundary mark No. 925 at 49°22′39.6″ N latitude, 95°09′11.6″ W longitude. It was found that the main channel of this northwest arm of the Lake of the Woods crossed the due south line five times, leaving two small segments of United States waters entirely surrounded by Canadian. To correct this situation, two reference marks were established in 1912 at 49°23′49″ N latitude to fix a point in the water about one-half mile north of mark No. 925, and this point was adopted by the Treaty of 1925 as the north limit of the United States in the Lake of the Woods, in place of the most northwestern point of the Lake. This is the most northerly point of the entire Canadian line, at 49°23′04.5″ N latitude, and lies at the northwest corner of a land area of 123.87 square miles, with some small islands, north of the normal course of the rest of the Canadian line, and separated from the rest of Minnesota and the United States by fifteen miles of water of the Lake of the Woods. By a convention, with a protocol and an agreement between Great Britain and the United States signed at Washington, February 24, 1925,[54] it was agreed (Article 3) that there should be established and maintained a Canadian and an international



[52] Pigeon River I. S. & B. Co. *v* Charles W. Cox, Ltd. (1934), 291 U. S. 138, 54 S. Ct. 361, 78 L. Ed. 695. *Amer. J. Int. Law*, XXIX (1935), 150.

[53] 67 *British and Foreign State Papers* 1099.

[54] Ratifications exchanged at Washington, July 17, 1925. 44 Stat. L. III, 2108. *U. S. Treaty Series*, No. 721. *Treaties of the U. S.* (Malloy, 1938), IV, 3993. *Treaties Affecting Canada* (Ottawa, 1927), 520. *Amer. J. Int. Law*, XIX (1925), 780; XIX, Supp., 128.

Lake of the Woods Control Board, under whose regulation, control, and approval (Article 1) the open level of the lake, unaffected by wind or currents, (Article 4) should ordinarily be maintained between elevations 1,056 and 1,061.25 sea level datum, and that (Article 11) no diversion should henceforth be made of any waters from the Lake of the Woods watershed to any other watershed except by authority of the United States or Canada within their respective territories and with the approval of the International Joint Commission. A convention between Canada and the United States signed at Ottawa on September 15, 1938,[55] empowering the commission to adopt measures of control throughout the Rainy Lake watershed, especially with respect to dams in boundary waters at Kettle Falls and International Falls, has lately been ratified and exchanged. The Canadian border with Minnesota is settled for 545.5 miles from the Michigan corner in Lake Superior northwest with Ontario up Pigeon River, through Rainy Lake and Rainy River to the northwest point in the Lake of the Woods 425.6 miles, with Manitoba along the meridian 95°09′11.6″ due south 26.6 miles, and along the 49th parallel due west to the Red River and the northeast corner of North Dakota, 93.3 miles.

North Dakota

The convention of 1818 [56] ran the boundary (Article 2) due west along and with the 49th parallel of north latitude from the Lake of the Woods to the Stony (Rocky) Mountains. The territory of Dakota was organized in 1861 with its northern boundary running from the boundary line of Washington Territory east along the 49° of north latitude to the main channel of the Red River of the North. The Territory of Idaho was formed in 1863, bounded north by the 49th parallel of latitude and east by the 27th degree of longitude west of Washington. North Dakota was separated from South Dakota and admitted as a state in 1889 with the north and west boundaries so determined. The boundary along the 49th parallel was first located in 1872–76 and resurveyed in 1912–13, and is now marked with five-foot iron or aluminum-bronze monuments on concrete foundations nowhere more than two and a half miles apart. The Canadian boundary with North Dakota is thus settled for 310 miles, in a single course from the northwest corner of Minnesota due west along the 49° parallel with Manitoba to about 101°22′ W longitude and then with Saskatchewan to the northeast corner of Montana, at 104°02′47.53″ W longitude.

[55] Ratified by Canada May 19, 1939; by the United States Sept. 10, 1940; ratifications exchanged at Ottawa Oct. 3, 1940. *U. S. Treaty Series*, No. 961.

[56] See Note 9, *supra*.

Montana

The convention of 1818 [57] ran the boundary (Article 2) due west along and with the 49th parallel of north latitude from the Lake of the Woods to the Stony (Rocky) Mountains. The Territory of Montana was organized in 1864 from a portion of Idaho Territory with its northern boundary running from the 39th degree of longitude west from Washington east along the boundary line of the British possessions to the 27th degree of longitude west from Washington; and the enabling act under which Montana was admitted as a state in 1889 fixed its boundaries "as at present described." The Canadian boundary line with Montana is thus settled for 545.6 miles in a single course from the northwest corner of North Dakota at 104°02′47.53″ W longitude due west along the 49° parallel, with Saskatchewan to 110° W longitude, with Alberta to the Lewis Range of mountains (crossing the "summit of the Rocky Mountains" or the Continental Divide at an altitude of 7,430 feet, in a saddle, with Glacier National Park to the south) at about 114°04′ W longitude, and then with British Columbia, to the northeast corner of Idaho, at 116°03′02.3″ W longitude.

Idaho

The convention of 1818 [58] ran the boundary (Article 2) due west along and with the 49th parallel of north latitude from the Lake of the Woods to the Stony (Rocky) Mountains. The Territory of Idaho was organized in 1863 with its northern boundary running from a point due north of the intersection of the Snake and the Kooskooskia or Clearwater rivers east along the 49th parallel of latitude to the 27th degree of longitude west of Washington. Montana was separated in 1864, and Idaho was admitted as a state in 1890 with its northern boundary running from the meridian which passes through the mouth of the Clearwater River east on the boundary line betweeen the United States and the British possessions to the 39th meridian west from Washington. The Canadian boundary line with Idaho is thus settled for 44.7 miles, in a single course from the northwest corner of Montana, at 116°03′02.3″ W longitude, due west along the 49° parallel, with British Columbia to the northeast corner of Washington, at about 117°01′ W longitude.

Washington

The Oregon region was claimed by the United States [59] variously as part of the Louisiana Purchase of 1803, by right of discovery by Lewis and Clark in 1804–05 and as a part of the Spanish cession of 1819; but Great Britain recognized

[57] See Note 9, *supra*.
[58] See Note 9, *supra*.
[59] *Int. Arbitrations* (Moore, 1898), I, 196. P. E. Corbett, *op. cit. supra*, Note 11; 14.

none of the claims as completely valid, and the area was the subject of many disputes between the two nations, sometimes leading almost to war. The convention of 1818 [60] provided (Article 3) that any country claimed by either nation on the northwest coast of America, westward of the Stony Mountains, should be free and open for ten years to the citizens and subjects of the two powers, without prejudice to any claim which either might have to any part of that country. This status continued, with the United States claiming as far north as latitude 54°40′,[61] to include the whole Pacific coast to the beginning of the Russian possessions, until by the Treaty of 1846 [62] it was provided that the boundary should be the 49th parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, then southerly through the middle of that channel and of Fuca's Straits to the Pacific Ocean. The Territory of Oregon was created in 1848 out of all that part of the territory of the United States lying west of the summit of the Rocky Mountains and north of the 42nd degree of north latitude; and the Territory of Washington was organized in 1853 from all of Oregon Territory north of the main channel of the Columbia River and the 46th parallel. The rest of the Oregon Territory outside of Oregon state was added in 1859, but the eastern portion was cut off in 1863 to form Idaho Territory, and the state of Washington was admitted in 1889 with its northern boundary the line between the United States and the British possessions.

The course of the line through the Straits of Georgia and of Juan de Fuca continued to cause dissension after the Treaty of 1846, and by the treaty concerning the Alabama Claims signed at Washington, May 8, 1871,[63] it was provided:

> Art. 34. [Reciting Article 1 of the Treaty of 1846, and that the Commissioners for that portion of the line have been unable to agree and] Whereas the Government of Her Britannic Majesty claims that such boundary line should, under the terms of the treaty above recited, be run through the Rosario Straits and the Government of the United States claims that it should be run through the Canal de Haro, it is agreed that the respective claims . . . shall be submitted to the arbitration and award of His Majesty the Emperor of Germany.
>
> Art. 35. The award of His Majesty the Emperor of Germany shall be considered as absolutely final and conclusive.

On July 29, 1871, the emperor was asked to accept the office of arbitrator, and on September 1, 1871, both countries were notified of his acceptance. The cases, presented in elaborate written statements by George Bancroft for the United States and Admiral James C. Prevost for Great Britain, were referred to three

[60] See Note 9, *supra*.

[61] The southern limit of Alaska, from Cape Muzon to Portland Channel.

[62] See Note 12, *supra*.

[63] Ratifications exchanged at London, June 17, 1871. 17 Stat. L. 863. *U. S. Treaty Series*, No. 133. *Treaties of the U. S.* (Malloy, 1910), I, 700 at 714. *Treaties Affecting Canada* (Ottawa 1927), 37 at 47. 61 *British and Foreign State Papers* 40. P. E. Corbett, *op. cit. supra*, Note 11; 17. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 473.

German experts. Emperor William I handed down his award on October 21, 1872,[64] deciding that:

> Most in accordance with the true interpretation of the Treaty concluded on June 15, 1846, between the Governments of Her Britannic Majesty and of the United States of America, is the claim of the Government of the United States that the boundary line between the territories of Her Britannic Majesty and the United States should be drawn through the Haro Channel.

At a conference in Washington on March 10, 1873,[65] the line was traced and marked on four identical charts, of which each government kept two, to serve, with a verbal description of the line also then prepared, as a perpetual record of the agreement between the two governments in the matter of the boundary. The Canadian boundary line with Washington is thus settled for 427.5 miles, from the northwest corner of Idaho at about 117°01′ W longitude due west along the 49° parallel, with British Columbia 285.5 miles across Boundary Bay and Point Roberts to Georgia Strait (last 9 miles in water), southeast in the Gulf of Georgia (15 miles), southwest and south in Haro Strait (45 miles), to the west of San Juan,[66] Orcas, López, and numerous smaller islands and of San Juan Channel and Rosario Strait, southwest (12 miles) and northwest (50 miles) through Juan de Fuca Strait, south of Vancouver Island, between San Juan Point and Port Renfrew (British Columbia) and Cape Flattery (Washington) (11 miles), 142 miles in all to the Pacific Ocean. Cape Alava at 48°10′ N latitude, 124°44′ W longitude is the westernmost point of the continental United States, excluding Alaska.

Alaska

A Russian fleet in 1732 made landings in Alaska, and purported to annex the country to the Russian empire, but there was no real occupation until Russia in 1741 sent out Vitus Bering, a Dane, to explore in the North Pacific. He sighted Mount St. Elias (18,008 feet high) and found the western Aleutian Islands, on one of which he was shipwrecked and died. His men returned with reports of rich furs to be had, and Russian trappers, sealers, and traders flowed in, so that Russia acquired title to the islands and a section of the mainland by discovery, occupation, and settlement.

After a long controversy with England, Japan, and other nations over navigation and fishing rights in the north Pacific Ocean and especially in Bering Sea,

[64] *Treaties of the U. S* (Malloy, 1910), I, 716. *Treaties Affecting Canada* (Ottawa, 1927), 49. 62 *British and Foreign State Papers* 188. *Int. Arbitrations* (Moore, 1898), I, 229.

[65] Protocol signed at Washington, March 10, 1873. *Treaties of the U. S.* (Malloy, 1910), I, 723. *Treaties Affecting Canada* (Ottawa, 1927), 50. 63 *British and Foreign State Papers* 354. *Int. Arbitrations* (Moore, 1898), I, 231.

[66] 50 *British and Foreign State Papers* 796.

Stratford Canning and the Count de Nesselrode and Pierre de Poletica signed for Great Britain and Russia at St. Petersburg on February 28/16, 1825,[67] a convention which provided that (Article 3) the line of demarcation between the possessions of the parties upon the coast of the continent and the islands of America to the northwest should commence at the southernmost point of Prince of Wales Island, at 54°40′ N latitude and between 131° and 133° W longitude, and ascend thence northerly along Portland Channel as far as the point of the continent where it strikes the 56th degree of north latitude, then follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude, and from such intersection along the said 141st meridian in its prolongation as far as the Frozen Ocean, (Article 4, 1st) Prince of Wales Island to belong wholly to Russia. It provided also (Article 4, 2nd) that, wherever the summit of the mountains which extend parallel to the coast from 56° N latitude to the point of intersection of 141° W longitude should prove to be more than ten marine leagues from the coast, the boundary should be a line parallel to the coast and never over ten marine leagues therefrom, and that (Article 8) the port of Sitka or Novo Archangelsk in the Alexander Archipelago (of 11,000 ice-made islands) should be open to commerce and vessels of British subjects for ten years and for any extension of that term granted to any other power.

After extensive negotiations backed in the United States chiefly by Secretary of State William H. Seward, so that the bargain was known as "Seward's Folly," Emperor Alexander III of Russia agreed to sell to the United States for $7,200,000 in gold all his possessions in America, covering an area of 590,884 square miles, with a coast line of 4,700 miles along the general trend and of 26,376 miles following the indentations and islands. The transfer was accomplished by a convention signed by Edouard de Stoeckl and Secretary Seward at Washington on March 30, 1867,[68] which bounded the territory sold, including Prince of Wales Island, as in Article 3 of the Convention of 1825, with the same provision (Article 4, 2nd) as to the line along the mountains, and added:

> Art. 1. . . . The western limit within which the territories and dominion conveyed, are contained, passes through a point in Behring's straits on the parallel of 65°30′ N latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the

[67] 12 *British and Foreign State Papers* 38. Martens, *Nouv. Rec. Gén. de Traités*, VI (1828), II, 684.

[68] Ratifications exchanged at Washington, June 20, 1867. 15 Stat. L. 539. *U. S. Treaty Series*, No. 301. *Treaties of the U. S.* (Malloy, 1910), II, 1521. Moore, *Dig. Int. Law* (Washington, 1906), I, 462.

southeast point of Cape Choukotski, to the meridian of 172° W longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorski couplet or group, in the North Pacific ocean, to the meridian of 193° W longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian.

As the value of Alaska began to be more evident, Canadian authorities sought to press back the boundaries wherever plausible, and with the discovery of gold in the Upper Yukon in 1880, making a good port on the coast extremely desirable for Canada, the question became more serious.[69] The convention as to Passamaquoddy Bay (see Maine, *supra*) signed at Washington on July 22, 1892, provided also (Article 1) for a coincident or a joint survey by commissions of the territory adjacent to the boundary line dividing the territory of Alaska from the province of British Columbia and the Northwest territory of Canada, from 54°40′ N latitude to the point where such boundary encounters the 141st degree of W longitude, to be completed within two years. By a convention signed at Washington, February 3, 1894,[70] the time for completion was extended to December 31, 1895. Great Britain on behalf of Canada before the joint commission in August 1898 claimed that the southerly part of the boundary should go up Pearse instead of Portland Channel; but the United States commissioners rejected this claim, as they did a proposal to refer the matter to arbitration, on the ground that there was nothing to arbitrate. By a *modus vivendi* concluded, October 20, 1899,[71] it was agreed that the boundary line in the region about the head of Lynn Canal, at Skagway, should be provisionally fixed, without prejudice to the claims of either party in the permanent adjustment, in the region of the Dalton Trail, beginning at the peaks west of Porcupine Creek, thence to the Klehini or Klaheela River, thence following the high or right bank of the Klehini River to the junction thereof with the Chilkat River, a mile and a half more or less north of Klukwan, and from such junction to the summit of the peak east of the Chilkat River, and, on the Dyea and Skagway Trails, the summits of the Chilcoot and White Passes. A convention signed at Washington, January 24, 1903,[72] provided (Article 1) for the creation of a tribunal of six impartial jurists of repute, three appointed by each party, to consider and decide seven questions (Article 3) under Articles 3, 4, and 5 of the Treaty of 1825 (Article 4) as to the point of commencement of the line, which is Portland Channel, the course the

[69] 69 *British and Foreign State Papers* 589–599.

[70] Ratifications exchanged at Washington, March 28, 1894. 28 Stat. L. 1200. *U. S. Treaty Series*, No. 143. *Treaties of the U. S.* (Malloy, 1910), I, 765. *Treaties Affecting Canada* (Ottawa, 1927), 97. *British Treaty Series*, 10 (1894).

[71] *Treaties of the U. S.* (Malloy, 1910), I, 777. 91 *British and Foreign State Papers* 116.

[72] Ratifications exchanged at Washington, March 3, 1903. 32 Stat. L. II, 1961. *Treaties of the U. S.* (Malloy, 1910), I, 787. *Treaties Affecting Canada* (Ottawa, 1927), 149. *British Treaty Series*, 4 (1903). P. E. Corbett, *op. cit. supra*, Note 11; 19. H. F. Angus, *Canada and Her Great Neighbor* (Toronto, 1938), 75.

line should take, how the ten-league strip should be measured, and what the mountains referred to were. The tribunal sat in London, and after argument and discussion, a majority, consisting of the three United States representatives and Richard Everard, Baron Alverstone, Lord Chief Justice of England, agreed on October 20, 1903,[73] on answers to the questions which established the boundary as beginning at Cape Muzon (on which the Tribunal was unanimous) on Dall Island, and running east in a straight line through Dixon Entrance to the mouth of Portland Channel, north of Wales and Pearse Islands to the 56th parallel, thence from one mountain summit to the next, inland from the heads of all fiords, to the head of Lynn Canal, across the White and Chilkoot Passes, thence southwesterly to Mount Fairweather and, from 60° N latitude by Yukon Territory, by the higher mountains around Yakutat Bay to Mount St. Elias. A convention signed at Washington, April 21, 1906,[74] provided for the appointment of two commissioners to locate the 141st meridian and mark it so far as necessary for determining the exact boundary line with Yukon Territory. The commissioners began in 1906 and completed in 1913 the survey of the meridian and the placing of 202 intervisible (except across a high ridge with perpetual snow at 61°31′ N latitude near Mount Natazhat) monuments for 645 miles from Demarcation Point on Mackenzie Bay in the Arctic Ocean at 69°39′ N latitude to Mount St. Elias [75] at about 60°15′ N latitude. Survey and marking of the coast boundary, about 892.7 miles in length, was completed in 1914. The western boundary has been undisturbed since the transfer from Russia. From 65°30′ N latitude it runs north along the meridian 168°49′30″ W through Bering Strait between Cape Prince of Wales on Seward Peninsula, Alaska, and Cape Deshnef or East Cape, Siberia, which are only forty miles apart, and between the two granite islands of the Diomede group, whose mid-distance locates the meridian. In June 1940 a Soviet scientific station was established on Big Diomede, Ratmanoff or Nunarbuk, two miles from Little Diomede, Krusenstern or Ignaluk, belonging to the United States, and a military base at Chukotka, on the mainland, not far from St. Lawrence Island, belonging to the United States. The line, which separates not only Alaska from Siberia but America from Asia, runs from 65°30′ N latitude southwest to 172° W longitude and then slightly more west of south to 167° E longitude, to pass midway between Attu Island of the Near Islands group in the Aleutian chain, and Copper Island of the Kormandorski group, east of the Kamchatka Peninsula. The Alaska Peninsula and Aleutian Islands extend in a

[73] *Treaties of the U. S.* (Malloy, 1910), I, 792. *For. Aff.*, X, (1932), 618.

[74] Ratifications exchanged at Washington, Aug. 16, 1906. 34 Stat. L. III, 2948. *Treaties of the U. S.* (Malloy, 1910), I, 803. *Treaties Affecting Canada* (Ottawa, 1927), 171. *British Treaty Series*, 15 (1906).

[75] Final report of Dec. 15, 1918; published, with Atlas, in 1919. *Treaties Affecting Canada* (Ottawa, 1927), 173–179.

shallow curve to the southwest more than a thousand miles from the mainland. Cape Wrangel on the west end of Attu Island, at 172°30′ E longitude, is on a meridian which to the south passes more than two thousand miles west of Honolulu, crosses the Equator between the Gilbert and Marshall Islands and runs less than thirteen hundred miles from the eastern coast of Australia. The northern boundary is undetermined, but by virtue of the ownership of Alaska, the United States, following the polar sector theory advanced of late years by several other nations, might claim a wedge-shaped piece of the Arctic between 141° and 168°49′30″ W longitude running to the Pole.[76] Point Barrow, the most northern place now occupied, at 71°24′ N latitude, is some three hundred miles north of the Arctic Circle and eleven hundred miles from the Pole. The whole Alaska–Canada boundary is 1,541 miles long.

B. Mexico–United States

Charles II of Spain and Charles II of England caused to be signed at Madrid on July 18, 1670,[77] a treaty to establish friendship and good understanding as to America which provided that (Article 7) Great Britain should enjoy and forever possess in full ownership all the lands, provinces, islands, colonies, and dominions in the West Indies or in any part of America which the king of Great Britain and his subjects then had and possessed. This included, on the continent, the Atlantic coast of Virginia, Carolina, and probably what had originally been French Florida from Cape Fear River as far south as the Altamaha River, near the center of the present Atlantic coast of Georgia. In the preliminary articles of peace ending the Seven Years' War between France, Great Britain, and Spain, it was agreed at Fontainebleau on November 3, 1762,[78] that France would cede Louisiana and New Orleans to Spain and that Charles III of Spain would yield to Great Britain Florida and all territory Spain possessed east and southeast of the Mississippi, in exchange for the return of Habana. Louis XV made the Louisiana cession to Spain by deed at Versailles on November 23, 1762; and in the peace treaty between the three powers signed at Paris on February 10, 1763,[79] it was provided that:

> Art. 7. In order to reëstablish peace upon solid and durable foundations and to banish forever every motive for a dispute concerning the boundaries of the French and British territories in the American continent, it is agreed that hereafter the bounds between the lands of His Christian Majesty and those of His Britannic Majesty in that part of the world shall be

[76] Timothy A. Taracouzio, *Soviets in the Arctic* (1938), 320.
[77] *Col. de los Trats. de España* (Abreu, 1751), I, 498.
[78] *Trats. de España* (Cantillo, Madrid, 1843), 485.
[79] *Trats. de España* (Cantillo, Madrid, 1843), 486. Martens, *Rec. de Tr.*, I (1817), 104. Coffee *v* Groover (1887), 123 U. S. 1, 8 S. Ct. 1, 31 L. Ed. 51.

irrevocably fixed as a line drawn in the middle of the Mississippi river from its source to the river Iberville; thence by a line drawn through the middle of the latter river and of Lakes Maurepas and Pontchartrain to the sea; and to this end the Christian King cedes and guarantees in full ownership to His Britannic Majesty the river and port of Mobile and all that he possesses or ought to possess on the left bank of the Mississippi river, except the city of New Orleans and the island on which it is situated, which shall remain to France.

Art. 20. His Catholic Majesty cedes and guarantees in full ownership to His Britannic Majesty Florida with the Fort of St. Augustine and the Bay of Panzacola, as also everything which Spain possesses on the continent of North America to the east and southeast of the river Mississippi.

The island of New Orleans was the irregular narrow strip of lowland between the waters of the Gulf of Mexico, Mississippi Sound, Lake Pontchartrain, Pass Manchac, Lake Maurepas, the Amite River, and Bayou Manchac [80] (formerly the river Iberville) on the east and north and the Mississippi River on the southwest, from about sixty-five miles above the city of New Orleans to the mouth of the Mississippi in the Delta ninety miles below the city. Great Britain divided the new territory into East and West Florida, separated by the Apalachicola River (at 85° W longitude), and in 1764 extended the north boundary of West Florida northward to the parallel through the mouth of the Yassous (Yazoo) River in the Mississippi, then said to be at 32°28′ N latitude. It was not until April 21, 1764, that France instructed Governor Dabbadie to turn Louisiana over to the Spanish commissioners. When they learned of the transfer of sovereignty the inhabitants objected and were subdued only in June 1769 by an expedition of 2,046 men under General Alexander O'Reilly from Havana. The provisional articles agreed upon between Great Britain and the thirteen original states at Paris on November 30, 1782,[81] provided that the boundaries of the United States should be:

Art. 2. [West] by a line to be drawn along the middle of the river Mississippi until it shall intersect the northernmost part of the 31st degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of 31° north of the equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint river; thence strait to the head of St. Mary's river; and thence down along the middle of St. Mary's river to the Atlantic Ocean.

Separate Article. It is hereby understood and agreed that in case Great Britain, at the conclusion of the present war, shall recover, or be put in possession of West Florida, the line of north boundary between the said province and the United States shall be a line drawn from the mouth of the river Yassous, where it unites with the Mississippi, due east, to the river Apalachicola.

[80] The entrance of Bayou Manchac into the Mississippi is now filled up, but a spillway has been cut from the river direct into Lake Pontchartrain at Bonnet Carré, about twenty-five miles above New Orleans; so at flood times the city is again on an island.

[81] See Note 3, *supra*.

The definitive treaty of peace signed at Paris, September 3, 1783,[82] repeated provisional Article 2 verbatim, but included nothing corresponding to the separate Article, since by the treaty of peace between George III of Great Britain and Charles III of Spain signed at Versailles also on September 3, 1783,[83] it was provided that:

Art. 5. His Britannic Majesty cedes and guarantees in full ownership to His Catholic Majesty East Florida as well as West Florida.

Thus Great Britain ceded to the United States all territory north of 31° N latitude and returned to Spain only what remained south of that parallel.

The treaty of friendship, boundaries, and navigation signed between Spain and the United States at San Lorenzo el Real (del Escorial), October 27, 1795,[84] provided that:

Art. 2. To prevent all disputes on the subject of the boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit: The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the river Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the river Apalachicola, or Catahouche, thence along the middle thereof to its junction with the Flint; thence straight to the head of St. Mary's river, and thence down the middle thereof to the Atlantic Ocean.

Art. 4. It is likewise agreed that the western boundary of the United States which separates them from the Spanish colony of Louisiana, is in the middle of the channel or bed of the river Mississippi, from the northern boundary of the said States to the completion of the thirty-first degree of latitude north of the equator. And His Catholic Majesty has likewise agreed that the navigation of the said river, in its whole breadth from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other Powers by special convention.

By the secret preliminary articles signed at San Ildefonso on October 1, 1800,[85] Charles IV of Spain undertook (Article 3) to restore to the French republic within six months the colony or province of Louisiana, with the same extension which it had then in the possession of Spain and which it had when France possessed it; and the retrocession was made formally by the treaty signed at Aranjuez March 21, 1801.[86] On October 15, 1802,[87] Charles IV issued from Barcelona a royal order to the Spanish governor of Louisiana to put General Victor or other

[82] See Note 4, *supra*.

[83] *Trats. de España* (Cantillo, Madrid, 1843), 586. 1 *British and Foreign State Papers* 647. Martens, *Rec. de Tr.*, III (1818), 541.

[84] Ratifications exchanged at Aranjuez, April 25, 1796. 8 Stat. L. 138. *U. S. Treaty Series*, No. 325. *Treaties of the U. S.* (Malloy, 1910), II, 1640. *Trats. y Convs.* (Mexico, 1878), 122. *Trats. de España* (Cantillo, Madrid, 1843), 665. *Bol. de la Real Soc. Geog.* (Madrid, 1913), LV, 504–523.

[85] Ratifications exchanged at San Lorenzo, Oct. 30, 1800. *Trats. y Convs.* (Mexico, 1878), 131. *Trats. de España* (Cantillo, Madrid, 1843), 692.

[86] Ratifications exchanged at Madrid, April 11, 1801. De Clercq, *Rec. des Tr. de la France* (Paris, 1880), I, 431. *Trats. y Convs.* (Mexico, 1878), 133. *Trats. de España* (Cantillo, Madrid, 1843), 697.

[87] *Trats. y Convs.* (Mexico, 1878), 135. *Trats. de España* (Cantillo, Madrid, 1843), 698.

official designated by the French republic in possession of the colony of Louisiana and its dependencies, as well as of the city and island of New Orleans with the same extension which it now has, which it had in the possession of France when that country ceded it to the crown of Spain, and as it should be after the treaties subsequently concluded between Spain and other powers. After negotiations conducted for the United States by Robert R. Livingston and James Monroe, Napoleon agreed to sell Louisiana for 60,000,000 francs (usually called $15,000,000); and the treaty signed at Paris, April 30, 1803,[88] provided:

Art. 1. [Reciting Article 3 of the treaty of San Ildefonso of Oct. 1, 1800] and whereas in pursuance of the Treaty and particularly of the third article the French Republic has an incontestible title to the domain and to the possession of the said Territory, the First Consul desiring to give to the United States a strong proof of his friendship doth hereby cede to the United States in the name of the French Republic forever and in full sovereignty the said territory with all its rights and appurtenances as fully and in the same manner as they have been acquired by the French Republic in virtue of the above mentioned treaty.

The actual transfer of authority and possession were made in New Orleans by Spain to France on November 30, 1803, and by France to the United States on December 20, 1803. The United States thereafter claimed from Spain part of the Texas coast and West Florida as far east as the Perdido River (the present western boundary of Florida with Alabama) as part of Louisiana; and long negotiations on this and the western boundary with New Spain and other differences ensued,[89] until a compromise settlement was finally agreed on with the ministers of Ferdinand VII, upon the United States assuming all claims of its citizens against Spain up to $5,000,000. In September 1810 the part of West Florida west of the Pearl River revolted from Spanish rule; in December 1810 that section was taken possession of for the United States by the governor of the Louisiana Territory, and included in the state of Louisiana in 1812. The portion between the Pearl River and Mobile was taken possession of by the United States in 1811 and annexed to the Territory of Mississippi in 1812. The territory from Mobile to the Perdido River was occupied by the United States in April 1813 and thereafter added to the Territory of Mississippi. A treaty with Spain of friendship, cession, and boundaries signed at Washington on February 22, 1819,[90] provided:

Art. 2. His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi,

[88] Ratifications exchanged at Washington, Oct. 21, 1803. 8 Stat. L. 200. *U. S. Treaty Series*, No. 86. *Treaties of the U. S.* (Malloy, 1910), I, 508. Moore, *Dig. Int. Law* (Washington, 1906), I, 433–439.

[89] *American State Papers*, Class I, *For. Rel.* (Washington, 1834), IV, 422–626, 650–703, 740–808. 3 *British and Foreign State Papers* 109–120; 4 *ibid.* 321–365, 817; 5 *ibid.* 228–495, 736–800, 1122–1166; 6 *ibid.* 189–509; 7 *ibid.* 555–684; 8 *ibid.* 524–557, 770. *Int. Arbitrations* (Moore, 1898), V, 4492–4531. Isaac Joslin Cox, *The West Florida Controversy, 1798–1813* (Baltimore, 1918), 699 pp.

[90] Ratifications exchanged at Washington, Feb. 22, 1821. 8 Stat. L. 252. *U. S. Treaty Series*, No. 327. *Treaties of the U. S.* (Malloy, 1910), II, 1651. *Trats. y Convs.* (Mexico, 1878), 138. *Trats. de España* (Cantillo, Madrid, 1843), 819.

known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, . . . are included in this article.

Art. 3. The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32nd degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches or Red river; then following the course to the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red river, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. . . . But if the source of the Arkansas river shall be found to fall north or south of latitude 42, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

Art. 4. To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a Commissioner and a surveyor who shall meet before the termination of one year. . . .

Congress, as it had done secretly in 1811 and 1813 in case it was necessary to keep out any foreign government,[91] openly on March 3, 1819,[92] authorized the president to take possession of the Floridas and to establish a temporary government therein. On October 24, 1820,[93] Ferdinand VII issued from Madrid a royal order to Juan M. Cagigal, captain-general and governor of Cuba and of the two Floridas, to deliver to the officials or agents of the United States all the territories situated east of the Mississippi known as East and West Florida, with the adjacent islands depending on the two Floridas, a transfer which was accomplished only after vexatious delays.[94] Colonel José Coppinger, as governor, delivered East Florida to Colonel Robert Butler on July 10, 1821, and Colonel José Callava, as governor, delivered West Florida to General Andrew Jackson on July 17, 1821.

Mexico made herself independent of Spain in 1821,[95] and the national constitution of October 4, 1824,[96] enumerated among the members of the federation the state of Coahuila and Texas and the territories of Upper California, Lower California, and Santa Fé of New Mexico. The state of Coahuila and Texas was composed of the two former Spanish provinces of those names which had been

[91] Moore, *Dig. Int. Law* (Washington, 1906), I, 439–445. 5 *British and Foreign State Papers* 736–748.

[92] Act of March 3, 1819, c. 93. 3 Stat. L. 523.

[93] *Trats. de España* (Cantillo, Madrid, 1843), 824.

[94] 9 *British and Foreign State Papers* 289–334, 822–824, 913–919.

[95] See Sec. 5, this chap., *supra*.

[96] *Leg. Mex.* (Mexico, 1876), I, 719.

separated by the river Nueces (with mouth at Corpus Christi, near 27°36′ N latitude). Mexico signed with the United States at Mexico City on January 12, 1828,[97] a boundary treaty which provided:

Art. 1. The dividing limits of the respective bordering territories of the United States of America and of the United Mexican States being the same as were agreed and fixed upon [by the Treaty between the United States and Spain of Feb. 22, 1819], the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty, which are herein recited, as follows:

Art. 2. [Same as Article 3 of the Treaty of Feb. 22, 1819, *supra*.]

Art. 3. [Same as Article 4 of the Treaty of Feb. 22, 1819, *supra*.]

Art. 4. The present treaty shall be ratified, and the ratifications shall be exchanged at Washington, within the term of four months, or sooner if possible.

The time for the exchange of ratifications was extended for one year from April 5, 1831, by an additional article signed in Mexico City on that date;[98] and the provisions of Article 3, for the appointment of a commissioner and surveyor by each country, were renewed for one year by a second additional article signed in Mexico City on April 3, 1835.[99] The joint commission had not been appointed before 1846, when war put an end to the whole 1828 treaty.

Texas was admitted as a state on December 29, 1845,[100] and the war with Mexico followed, from May 1846 to September 13, 1847.[101] The treaty of peace, friendship, limits, and settlement which was signed at Guadalupe Hidalgo on February 2, 1848,[102] provided:

Art. 5. The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico

[97] Ratifications exchanged at Washington, April 5, 1832. 8 Stat. L. 372. *U. S. Treaty Series*, No. 202. *Treaties of the U. S.* (Malloy, 1910), I, 1082. *Trats. y Convs.* (Mexico, 1878), 109. 19 *British and Foreign State Papers* 234. *American State Papers, For. Rel.*, 2d Ser. (Washington, 1859), VI, 822, 946. Martens, *Nouv. Rec. Gén. de Traités*, XII (1837), 264.

[98] Ratifications exchanged at Washington, April 5, 1832. 8 Stat. L. 376. *U. S. Treaty Series*, No. 202. *Treaties of the U. S.* (Malloy, 1910), I, 1084. *Trats. y Convs.* (Mexico, 1878), 120. 19 *British and Foreign State Papers* 238. Martens, *Nouv. Rec. Gén. de Traités*, XII (1837), 270.

[99] Ratifications exchanged at Washington, April 20, 1836. 8 Stat. L. 464. *U. S. Treaty Series*, No. 204. *Treaties of the U. S.* (Malloy, 1910), I, 1099. 23 *British and Foreign State Papers* 656; 25 *ibid.* 1067. Martens, *Nouv. Rec. Gén. de Traités*, XII (1837), 750.

[100] Moore, *Dig. Int. Law* (Washington, 1906), I, 446–457. 25 *British and Foreign State Papers* 1392–1411; 33 *ibid.* 232–300.

[101] 34 *British and Foreign State Papers* 1137–1140; 35 *ibid.* 861; 37 *ibid.* 565, 756. Martens, *Nouv. Rec. Gén. de Traités*, IX (1852), 66, 166. Justin H. Smith, *The War with Mexico* (New York, 1919), 2 vols. Lord Aberdeen, "Texas y California," *Arch. Hist. Dipl. Mex.* (Mexico City, 1925), Num. 15. J. Fred Rippy, *The United States and Mexico* (New York, 1926).

[102] Ratifications exchanged at Queretaro, May 30, 1848. 9 Stat. L. 922; 18 Stat. L. II, 492. *U. S. Treaty Series*, No. 207. *Treaties of the U. S.* (Malloy, 1910), I, 1107. *Trats. y Convs. Vig.* (Mexico, 1930), I, 140. "Algunos Documentos sobre el Tratado de Guadalupe," *Arch. Hist. Dipl. Mex.* (Mexico City, 1930), Num. 31. "La Gestión Diplomática del Doctor Mora," *ibid.* (Mexico City, 1931), Num. 35. *U. S. For. Rel.* 1902. App. II, 113. Moore. *Dig. Int. Law* (Washington, 1906), I, 458. 37 *British and Foreign State Papers* 567.

(which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; [or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;] thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean. . . . [Each Government shall appoint a commissioner and a surveyor to meet within one year at San Diego and run and mark the boundary in its whole course to the mouth of the Rio Bravo del Norte.]

Art. 6. The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the river Colorado below its conflux with the Gila, to and from their possessions situated north of the boundary line.

Art. 7. The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being . . . divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries.

Art. 12. In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of $15,000,000.

By this treaty Mexico ceded to the United States, Upper California, Nuevo Mexico, and northern portions of the states of Tamaulipas, Coahuila, and Sonora. Five years later, after negotiations conducted for the United States chiefly by Captain James Gadsden, Mexico sold to the United States for $10,000,000 the Mesilla Valley, south of the Gila River. The treaty signed at Mexico City on December 30, 1853,[103] provided:

Art. 1. The Mexican Republic agrees to designate the following as her true limits with the United States for the future: Retaining the same dividing line between the two Californias as already defined and established, according to the 5th article of the treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows: Beginning in the Gulf of Mexico, 3 leagues from land, opposite the mouth of the Rio Grande, as provided in the 5th article of the treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31°47′ north latitude crosses the same; thence due west 100 miles; thence south to the parallel of 31°20′ north latitude; thence along the said parallel of 31°20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado river 20 English miles below the junction of the Gila and Colorado rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico. [Each Government shall nominate one Commissioner, to meet at Paso del Norte within 3 months to survey and mark out upon the land the dividing line, where not already surveyed and established.]

[103] Ratifications exchanged at Washington, June 30, 1854. 10 Stat. L. 1031; 18 Stat. L. II, 503. *U. S. Treaty Series*, No. 208. *Treaties of the U. S.* (Malloy, 1910), I, 1121. *Trats. y Convs.* (Mexico, 1930), I, 161. *Amer. J. Int. Law*, XXVI (1932), 43. Paul Neff Garber, *The Gadsden Treaty* (Philadelphia, 1923). Moore, *Dig. Int. Law* (Washington, 1906), I, 460. 42 *British and Foreign State Papers* 724; 47 *ibid.* 789. Martens, *Nouv. Rec. Gen. de Traités*, 2e Sér., I (1876), 1.

Art. 4. [Articles 6 and 7 of the Treaty of Guadalupe Hidalgo are abrogated and annulled.] The vessels and citizens of the United States shall, in all time, have free and uninterrupted passage through the Gulf of California to and from their possessions situated north of the boundary line. . . . [The provisions in Article 7 of that treaty] shall remain in force only so far as regards the Rio Bravo del Norte below . . . the intersection of the 31°47′30″ parallel of latitude with the boundary line established by the late treaty dividing said river from its mouth upwards.

Art. 8. The Mexican Government having on the 5th of February, 1853, authorized the early construction of a plank and rail road across the Isthmus of Tehuantepec, and, to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither Government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

A treaty signed at Washington on April 13, 1937,[104] recited that Article 8 of the boundary treaty of December 30, 1853, was agreed upon in the light of a certain state of affairs which had disappeared and declared that article to be terminated. The Gadsden purchase completed the acquisitions of territory from Mexico [105] and left the southern boundary of the United States substantially as it stands today [106] for the whole 1,921.5 miles, 1,229.1 by rivers and 692.4 overland. Minor adjustments at definite points will be considered in connection with the states on whose southern edge they lie, taken in order from east to west.

Texas

In 1817 near the beginning of Mexico's struggle for independence, José Manuel Herrera was sent by the Mexican Congress as minister to the United States, but he got no further than New Orleans, where he planned with Luis de Aury, later at Amelia Island,[107] the establishment of an independent provisional government at the port of Galveston. Before the Mexican Congress could confirm the movement, the rising was put down by Spanish forces.[108]

Texas declared its independence of Mexico on March 2, 1836,[109] and claimed to the Rio Grande as its natural western boundary. Mexico declared that, as only

[104] Ratifications exchanged at Washington, Dec. 21, 1937. 52 Stat. L. 1457. *U. S. Treaty Series*, No. 932. *Treaties of the U. S.* (Malloy, 1938), IV, 4502. *Trats. y Convs. Vig.* (Mexico, 1938), VI, 125. *U. S. For. Rel.*, 1871, pp. 612, 627; 1872, p. 428. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXXV (1938), 374.

[105] Occasional rumors of further sales were denied. *U. S. For. Rel.*, 1865, III, 496, 576; 1874, pp. 766, 842.

[106] *Survey of Int. Affairs, 1927* (London, 1929), 442–455.

[107] See Chap. II, Sec. 1, *infra*.

[108] *American State Papers*, Class I, *For. Rel.* (Washington, 1834), IV, 130, 187, 198. 6 *British and Foreign State Papers* 703, 762.

[109] "Don Manuel Eduardo de Gorostiza y la Cuestión de Texas," *Arch. Hist. Dipl. Mex.* (Mexico City, 1924), Num. 8. *Dipl. Corr. of the U. S.* (Manning. Washington, 1939), XII, 3–460. 24 *British and Foreign State Papers* 1288; 25 *ibid.* 597, 1075–1102, 1132–1183; 26 *ibid.* 827–894, 1378–1427; 31 *ibid.* 801–814; 34 *ibid.* 1261–1262.

Texas and not Coahuila had revolted, the boundary should be the river Nueces, but General Antonio López de Santa Ana, ruler of Mexico, while held prisoner by the Texans at San Jacinto on April 21, 1836, signed an agreement that the Rio Grande should be the northern limit of Mexico. A law of the Republic of Texas of December 19, 1836,[110] described the boundary line as,

> Beginning at the mouth of the Sabine river and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the 42nd degree of north latitude, thence along the boundary line as defined in the treaty between Spain and the United States to the beginning.

This carried the Texan claim west to near 107°30′ W longitude, with a narrow strip up into the present Wyoming, and the main northern line along the Arkansas River. Under a convention with Texas signed at Washington, April 25, 1838,[111] a joint commission surveyed the United States–Texas line in 1840 along the west bank of the Sabine River from the Gulf of Mexico at 29°41′27.5″ N latitude, 93°50′14.2″ W longitude to Logans Ferry at 31°58′24″ N latitude, 94°00′02.4″ W longitude; and in 1841 from Logans Ferry still up the west bank of the Sabine River to the 32d parallel, and thence due north nearly at 94°02′35.1″ W longitude 106.4 miles to the south bank of the Red River.

The Rio Grande boundary as fixed by the Treaty of Guadalupe Hidalgo of 1848 was surveyed in 1852–53 and a report by Major William H. Emory, chief of the United States boundary commission, was published in 1857. The blockade of the coast of the southern states established by the North during the Civil War could not, in compliance with the seventh article of that treaty, prevent neutral navigation up the Rio Grande to Matamoras in Mexico.[112] A convention signed at Washington on July 29, 1882,[113] provided (Article 1) for preliminary reconnaissances by parties under army officers to ascertain the condition of the monuments marking the boundary line established by the treaties of 1848 and 1853, (Article 2) the creation of an international boundary commission (Article 3) with authority to set, rebuild, and replace monuments, not over 8,000 meters (5 miles) apart, (Article 8) to be in force until the conclusion of the work, if not over four years and four months.

In 1884 Mexico made a claim to two islands in the Rio Grande, called by her

[110] *Laws of the Republic of Texas* (Houston, 1838), I, 133. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 469.

[111] Ratifications exchanged at Washington, Oct. 12, 1838. 8 Stat. L. 511. *U. S. Treaty Series*, No. 356. *Treaties of the U. S.* (Malloy, 1910), II, 1779.

[112] The *Peterhoff* (1866), 72 U. S. (5 Wall.) 28, 18 L. Ed. 564, *Blatch. Pr. Cas.* 403. Moore, *Dig. Int. Law* (Washington, 1906), VII, 715.

[113] Ratifications exchanged at Washington, March 3, 1883. 22 Stat. L. 986. *U. S. Treaty Series*, No. 220. *Treaties of the U. S.* (Malloy, 1910), I, 1141. *Trats. y Convs. Vig.* (Mexico, 1930), I, 165. Moore, *Dig. Int. Law* (Washington, 1906), I, 753. *Arch. Dipl.*, 2e Sér. (1884, II), X, 32. Martens, *Nouv. Rec. Gen. de Traités*, 2e Sér., XI (1887), 759.

Morteritos and Sabinitos, identifying them with two islands assigned to Mexico in the Emory report of 1857. The United States agreed as to Sabinitos, but found a typographical mistake in the printed report as to Morteritos, and denied "the Mexican pretension to that island and to accretions thereto from the left or United States bank of Rio Grande." Mexico subsequently admitted a confusion in names, and decided not to insist upon the claim.[114] A convention signed at Washington on November 12, 1884,[115] cited the treaties of 1848 and 1853 as to the channels of the Rio Grande and the Rio Colorado,[116] and provided:

Art. 1. The dividing line shall forever be that described in the aforesaid Treaty and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

Art. 2. Any other change, wrought by the force of the current, whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid Treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commissions in 1852, but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits.

The time fixed in Article 8 of the Convention of 1882 was extended for eighteen months by an additional article added by an agreement signed at Washington, December 5, 1885,[117] and that time also having expired without the appointment of the commission, the whole convention of 1882 was revived and renewed as prior to January 3, 1889, and further extended for five years by a convention signed at Washington, February 18, 1889.[118] A convention signed at Washington, March 1, 1889,[119] provided:

Art. 1. All differences or questions that may arise on that portion of the frontier between the United States of America and the United States of Mexico where the Rio Grande and the Colorado rivers form the boundary line, whether such differences or questions grow

[114] *U. S. For. Rel.*, 1884, pp. 373, 375, 379, 380, 393, 396. Moore, *Dig. Int. Law* (Washington, 1906), I, 759.

[115] Ratifications exchanged at Washington, Sept. 13, 1886. 24 Stat. L. 1011. *U. S. Treaty Series*, No. 226. *Treaties of the U. S.* (Malloy, 1910), I, 1159. *Trats. y Convs. Vig.* (Mexico, 1930), I, 169. Moore, *Dig. Int. Law* (Washington, 1906), I, 760. 75 *British and Foreign State Papers* 994. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIII (1888), 675.

[116] No other treaty between Mexico and the United States was signed on this day, or on the same subject at any time. A purported convention with identical date and language, but relating to the channels of the Rio Grande and the Rio Gila is erroneously reported. Martens, *Nouv. Rec. Gén de Traités*, 2e Sér., XIII (1888), 673.

[117] Ratifications exchanged at Washington, June 27, 1887. 25 Stat. L. 1390. *U. S. Treaty Series*, No. 229. *Treaties of the U. S.* (Malloy, 1910), I, 1163.

[118] Ratifications exchanged at Washington, Oct. 12, 1889. 26 Stat. L. 1403. *U. S. Treaty Series*, No. 231. *Treaties of the U. S.* (Malloy, 1910), I, 1165. 81 *British and Foreign State Papers* 216. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XVIII (1893), 548.

[119] Ratifications exchanged at Washington, Dec. 24, 1890. 26 Stat. L. 1512. *U. S. Treaty Series*, No. 232. *Treaties of the U. S.* (Malloy. 1910), I, 1167. *Trats. y Convs. Vig.* (Mexico, 1930), I, 173. 81 *British and Foreign State Papers* 739. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XVIII (1893), 553. *U. S. For. Rel.*, 1888, II, 1099, 1109–1112, 1200, 1241–1246; 1889, pp. 615–636; 1894, pp. 411–415; 1897, pp. 398–405. *Amer. J. Int. Law*, V (1911), Supp., 121.

out of alterations or changes in the bed of the aforesaid Rio Grande and that of the aforesaid Colorado river, or of works that may be constructed in said rivers, or of any other cause affecting the boundary line, shall be submitted for examination and decision to an International Boundary Commission, which shall have exclusive jurisdiction in the case of said differences or questions.

Art. 2. The International Boundary Commission shall be composed of a Commissioner [and a Consulting Engineer to be appointed by each Government, and such secretaries and interpreters as either sees fit to add].

Art. 3. The International Boundary Commission shall not transact any business unless both Commissioners are present. It shall sit on the frontier of the two contracting countries, and shall establish itself at such places as it may determine upon; it shall, however, repair to places at which any of the difficulties or questions mentioned in this convention may arise, as soon as it shall have been duly notified thereof.

Art. 4. When, owing to natural causes, any change shall take place in the bed of the Rio Grande or in that of the Colorado river, in that portion thereof wherein those rivers form the boundary line between the two countries, which may affect the boundary line, notice of that fact shall be given by the proper local authorities on both sides to their respective Commissioners of the International Boundary Commission, on receiving which notice it shall be the duty of the said Commission to repair to the place where the change has taken place or the question has arisen, to make a personal examination of such change, to compare it with the bed of the river as it was before the change took place, as shown by the surveys, and to decide whether it has occurred through avulsion or erosion, for the effects of articles 1 and 2 of the convention of November 12, 1884; having done this, it shall make suitable annotations on the surveys of the boundary line.

The extended time under Article 8 of the Convention of 1882 was further extended for two years from October 11, 1894, by a convention signed at Washington, August 24, 1894.[120] The duration of the convention of March 1, 1889, was extended for one year from December 24, 1895, by a convention signed at Washington, October 1, 1895;[121] for one year from December 24, 1896, by a convention signed at Washington, November 6, 1896;[122] for one year from December 24, 1897, by a convention signed at Washington, October 29, 1897;[123] for one year from December 24, 1898, by a convention signed at Washington, December 2, 1898;[124] for one year from December 24, 1899, by a convention signed at Washington, December 22, 1899,[125] and finally to continue in force and effect indefinitely,

[120] Ratifications exchanged at Washington, Oct. 11, 1894. 28 Stat. L. 1213. *U. S. Treaty Series*, No. 235. *Treaties of the U. S.* (Malloy, 1910), I, 1174. *Arch. Dipl.*, 2e Sér. (1895, I), LIII, 8. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXI (1897), 715.

[121] Ratifications exchanged at Washington, Dec. 21, 1895. 29 Stat. L. 841. *U. S. Treaty Series*, No. 236. *Treaties of the U. S.* (Malloy, 1910), I, 1175. 88 *British and Foreign State Papers* 752.

[122] Ratifications exchanged at Washington, Dec. 23, 1896. 29 Stat. L. 857. *U. S. Treaty Series*, No. 238. *Treaties of the U. S.* (Malloy, 1910), I, 1179. 88 *British and Foreign State Papers* 753.

[123] Ratifications exchanged at Washington, Dec 21, 1897. 30 Stat. L. 1625. *U. S. Treaty Series*, No. 240. *Treaties of the U. S.* (Malloy, 1910), I, 1181. 89 *British and Foreign State Papers* 1157.

[124] Ratifications exchanged at Washington, Feb. 2, 1899. 30 Stat. L. 1744. *U. S. Treaty Series*, No. 241. *Treaties of the U. S.* (Malloy, 1910), I, 1182. 90 *British and Foreign State Papers* 87.

[125] Ratifications exchanged at Washington, May 5, 1900. *U. S. Treaty Series*, No. 243. *Treaties of the U. S.* (Malloy, 1910), I, 1191.

subject to dissolution on six months' notice, by a convention signed at Washington on November 21, 1900.[126] The provisions of Articles 1 and 2 of the convention of November 12, 1884, were modified by a convention signed at Washington, March 20, 1905,[127] which provided:

Whereas, as a result of the topographical labors of the Boundary Commission created by the Convention of March 1, 1889, it has been observed that there is a typical class of changes effected in the bed of the Rio Grande, in which, owing to slow and gradual erosion, coupled with avulsion, said river abandons its old channel and there are separated from it small portions of land known as "bancos" bounded by the said old bed, and which, according to the terms of Article 2 of the aforementioned Convention of 1884, remain subject to the dominion and jurisdiction of the country from which they have been separated;

Whereas, said "bancos" are left at a distance from the new river bed, and, by reason of the successive deposits of alluvium, the old channel is becoming effaced, the land of said "bancos" becomes confused with the land of the "bancos" contiguous thereto, thus giving rise to difficulties and controversies, some of an international and others of a private character;

Whereas, the labors of the International Boundary Commission, undertaken with the object of fixing the boundary line with reference to the "bancos," have demonstrated that the application to these "bancos" of the principle established in Article 2 of the Convention of 1884 renders difficult the solution of the controversies mentioned, and, instead of simplifying, complicates the said boundary line between the two countries: . . .

Art. 1. The 58 bancos surveyed and described in the report of the consulting engineers, dated May 30, 1898, to which reference is made in the record of proceedings of the International Boundary Commission, dated June 14, 1898, and which are drawn on 54 maps on a scale of 1 to 5,000, and 3 index maps, signed by the Commissioners and by the Plenipotentiaries appointed by the convention, are hereby eliminated from the effects of Article 2 of the Treaty of November 12, 1884.

Within the part of the Rio Grande comprised between its mouth and its confluence with the San Juan river the boundary line between the two countries shall be the broken red line shown on the said maps — that is, it shall follow the deepest channel of the stream — and the dominion and jurisdiction of so many of the aforesaid 58 bancos as may remain on the right bank of the river shall pass to Mexico, and the dominion and jurisdiction of those of the said 58 bancos which may remain on the left bank shall pass to the United States of America.

Art. 2. The International Commission shall, in the future, be guided by the principle of elimination of the bancos established in the foregoing article, with regard to the labors concerning the boundary line throughout that part of the Rio Grande and the Colorado river which serves as a boundary between the two nations. There are hereby excepted from this provision the portions of land segregated by the change in the bed of the said rivers having an area of over 250 hectares, or a population of over 200 souls, and which shall not be considered

[126] Ratifications exchanged at Washington, Dec. 24, 1900. 31 Stat. L. 1936. *U. S. Treaty Series*, No. 244. *Treaties of the U. S.* (Malloy, 1910), I, 1192. *Trats. y Convs. Vig.* (Mexico, 1930), I, 183. 92 *British and Foreign State Papers* 1126. *U. S. For. Rel.*, 1900, pp. 786–789.

[127] Ratifications exchanged at Washington, May 31, 1907. 35 Stat. L. II, 1863. *U. S. Treaty Series*, No. 461. *Treaties of the U. S.* (Malloy, 1910), I, 1199. *Amer. J. Int. Law*, I (1907), Supp., 278. *Trats. y Convs. Vig.* (Mexico, 1930), I, 187. 98 *British and Foreign State Papers* 753. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., I (1907), 299. *U. S. Tr. Inf. Bull.*, April 1930, No. 7, 4. *U. S. For. Rel.*, 1907, II, 837. Applied to 337 acres separated from Chihuahua by avulsion in 1926. Shapleigh *v* Mier (1936), 83F (2d), 673; affirmed (1937), 299 U. S. 468, 57 S. Ct. 261, 81 L. Ed. 355. *U. S. Tr. Inf. Bull.*, Jan. 1937, No. 88. 22. *Tex. L. Rev.*, XV (1937), 513.

as bancos for the purposes of this treaty and shall not be eliminated, the old bed of the river remaining, therefore, the boundary in such cases.

Art. 3. With regard to the bancos which may be formed in future, as well as to those already formed but which are not yet surveyed, the Boundary Commission shall proceed to the places where they have been formed, for the purpose of duly applying Articles 1 and 2 of the present convention, and the proper maps shall be prepared in which the changes that have occurred shall be shown, in a manner similar to that employed in the preparation of the maps of the aforementioned 58 bancos.

As regards these bancos, as well as those already formed but not surveyed, and those that may be formed in future, the Commission shall mark on the ground, with suitable monuments, the bed abandoned by the river, so that the boundaries of the bancos shall be clearly defined.

On all separated land on which the successive alluvium deposits have caused to disappear those parts of the abandoned channel which are adjacent to the river, each of the extremities of said channel shall be united by means of a straight line to the nearest part of the bank of the same river.

A convention providing for the equitable distribution of the waters of the Rio Grande for irrigation purposes was signed at Washington, May 21, 1906.[128] The United States Department of State about 1913 published reports describing 89 *bancos* that had been eliminated by the commission.

Between 1852 and 1868[129] the channel of the Rio Grande between El Paso, Texas, and Ciudad Juárez, Chihuahua, shifted to the south in places as much as eight hundred yards, so as to leave a tract of some six hundred acres, called El Chamizal, which had formerly been south of the channel in Chihuahua, Mexico, to the north of the channel and adjoining, by a wholly dry connection, El Paso, Texas. Jetties were built on the El Paso shore and it was later disputed whether they were only what was required for flood defense or tended to throw the current farther toward the southern bank. Residents of El Paso for many years had considered the strip as part of Texas; that state granted titles to parcels in the area to United States citizens; city and state authorities exercised civil and criminal jurisdiction over the thousand or more persons residing on the tract; and the United States erected a custom-house and immigration station within it. Title disputes which got to court were decided in favor of the United States possessors against Mexican claimants[130] until 1907,

[128] Ratifications exchanged at Washington, Jan. 16, 1907. 34 Stat. L. III, 2953. *U. S. Treaty Series*, No. 455. *Treaties of the U. S.* (Malloy, 1910), I, 1202. *Trats. y Convs. Vig.* (Mexico, 1930), I, 191. 101 *British and Foreign State Papers* 469. Moore, *Dig. Int. Law* (Washington, 1906), I, 761. *U. S. For. Rel.*, 1880, pp. 752, 783; 1894. pp. 395–397. *U. S. Tr. Inf. Bull.*, Oct. 1929, No. 1, 12; July 1930, No. 10, 6; Aug. 1932, No. 35, 7. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXV (1908), 461. *Rev. de Der. Int.* (Habana, 1935), XXVII, 82. *Tex. L. Rev.*, IX (1931), 514–518.

[129] *U. S. For. Rel.*, 1867, II, 513, 526; 1893, pp. 462–467; 1894, pp. 391–394.

[130] Grant before 1817 by Spanish government in town of Nuestra Señora de Guadalupe (now Juárez), lots in Campbell's Addition to the City of El Paso; judgment for defendant. Warder *v.* Loomis (1902), U. S. Circ. Ct. West. Distr. Tex.; affirmed, no opinion (1904) Circ. Ct. App. 5th Circ., 61 C.C.A. 682, 127 Fed. 1022; appeal dismissed for want of jurisdiction (1905), 197 U. S. 619, 25 S. Ct. 799, 49 L. Ed. 909. Lots in Cotton Addition to the city of El Paso, judgment on verdict for plaintiff. Cotton *v.* Warder (1905), U. S. Circ. Ct. West. Distr. Tex., writ of error dismissed for want of jurisdiction (1907), 207 U. S. 582, 28 S. Ct. 259, 52 L. Ed. 350.

when the attitude of the United States Department of State upon the Mexican government's claim of title, that the matter was not a local but an international issue, caused the courts to decline to take jurisdiction of further suits involving titles within the tract. On October 29, 1894, Ignacio Mariscal, Mexican foreign minister, presented to the International Boundary Commission of two under the convention of March 1, 1889, a claim of Pedro Y. García to a parcel of land in El Chamizal under a prior grant from Mexico. In its Joint Journal on November 6, 1895, the commission stated that the sole question in the case was whether the river channel in changing its location to the south moved across the intervening strip by gradual erosion, as claimed by the United States, or by sudden avulsion, as claimed by Mexico. The two commissioners could not reach any agreement and closed the case in 1896; but on December 4, 1897, the commission jointly suggested in the Journal that the two governments should agree upon and appoint a third commissioner, not a citizen of either nation, to hear from the two commissioners both sides of the question and act as arbiter on the points as to which the two did not agree. Diplomatic discussion continued for some years, until the two countries signed at Washington on June 24, 1910,[131] an arbitration convention which provided:

Art. 1. The Chamizal tract in dispute is located at El Paso, Texas, and Ciudad Juárez, Chihuahua, and is bounded westerly and southerly by the middle of the present channel of the Rio Grande otherwise called Rio Bravo del Norte, easterly by the middle of the abandoned channel of 1901, and northerly by the middle of the channel of the river as surveyed by Emory and Salazar in 1852. . . .

Art. 2. The difference as to the international title of the Chamizal tract shall be again referred to the International Boundary Commission, which shall be enlarged by the addition, for the purposes of the consideration and decision of the aforesaid difference only, of a third Commissioner, who shall preside over the deliberations of the Commission. This Commissioner shall be a Canadian jurist and shall be selected by the two Governments by common accord, or, failing such agreement, by the Government of Canada, which shall be requested to designate him. No decision of the Commission shall be perfectly valid unless the Commission shall have been fully constituted by the three members who composed it.

Art. 3. The Commission shall decide solely and exclusively as to whether the international title to the Chamizal tract is in the United States of America or Mexico. The decision of the Commission, whether rendered unanimously or by majority vote of the Commissioners, shall be final and conclusive upon both Governments, and without appeal. The decision shall be in writing and shall state the reasons upon which it is based. It shall be rendered within 30 days after the close of the hearings.

Art. 5. [Cases before Dec. 1, 1910; countercases before Feb. 1, 1911; trial to begin at El Paso March 1, 1911.]

[131] Ratifications exchanged at Washington, Jan. 24, 1911. 36 Stat. L. II, 2481. *U. S. Treaty Series*, No. 555. *Treaties of the U. S.* (Malloy, 1923), III, 2729. 103 *British and Foreign State Papers* 588. *U. S. For. Rel.*, 1911, p. 565. *Amer. J. Int. Law*, IV (1910), 925; V (1911), Supp., 117. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., IV (1911), 719.

Art. 8. If the arbitral award provided for by this Convention shall be favorable to Mexico, it shall be executed within the term of 2 years, which cannot be extended, and which shall be counted from the date on which the award is rendered. During that time the *status quo* shall be maintained in the Chamizal tract on the terms agreed upon by both Governments.

Art. 9. By this Convention the Contracting Parties declare to be null and void all previous propositions that have reciprocally been made for the diplomatic settlement of the Chamizal Case; but each party shall be entitled to put in evidence by way of information such of this official correspondence as it deems advisable.

By a supplemental protocol signed at Washington, December 5, 1910,[132] the times fixed in Article 5 were extended for two and a half months. The commission, which was completed by the appointment of the Hon. Eugene Lafleur of Montreal as the presiding commissioner, received the cases, heard the oral arguments, and on June 10, 1911, voted on the questions involved. The award, by the presiding and Mexican commissioners, but signed by all three, and announced at El Paso on June 15, 1911,[133] decided that the river channel from 1852 to 1864 had changed by slow and gradual erosion, so that the international boundary during that period moved with the river, but that the changes from 1864 to 1868 had not been by slow and gradual erosion, so that the part of El Chamizal accreted after 1864 was awarded to Mexico. The award did not relocate the channel line of 1864, as no evidence on that point had been submitted to the commission. The Mexican commissioner, F. B. Puga, filed an individual opinion,[134] and the United States commissioner, Brigadier-General Anson Mills (retired), filed a dissenting opinion,[135] objecting that the commission had no jurisdiction under the arbitration as submitted to make a division of the tract in question, and that the award was void for uncertainty. There was much discussion of the result of the arbitration [136] and some further diplomatic negotiations,[137] but owing to the disturbed conditions in Mexico following the overthrow of President José de la Cruz Porfirio Díaz on May 25, 1911, no further agreement was reached. The failure of the United States to carry out the Chamizal award has been used by Mexico in the current discussions of the agricultural and oil expropriations as a reason why she cannot consent to submit to arbitration any other case with the United States. The city of El Paso has spread further into the part of the area awarded Mexico, and the property valuation there now is several million dollars.

[132] Ratifications exchanged at Washington, Jan. 24, 1911. 36 Stat. L. II, 2487. *U. S. Treaty Series*, No. 556. *Treaties of the U. S.* (Malloy, 1923), III, 2732. 103 *British and Foreign State Papers* 591. *U. S. For. Rel.*, 1911, p. 569. *Amer. J. Int. Law*, V (1911), Supp., 120. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., IV (1911), 724.

[133] *U. S. For. Rel.*, 1911, p. 573. *U. S. Tr. Inf. Bull.*, April 1937, No. 91, 9. *Amer. J. Int. Law*, IV (1910), 595; V (1911), 782–812; XXV (1931), 326; XXXII (1938), 329. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., VI (1913), 66.

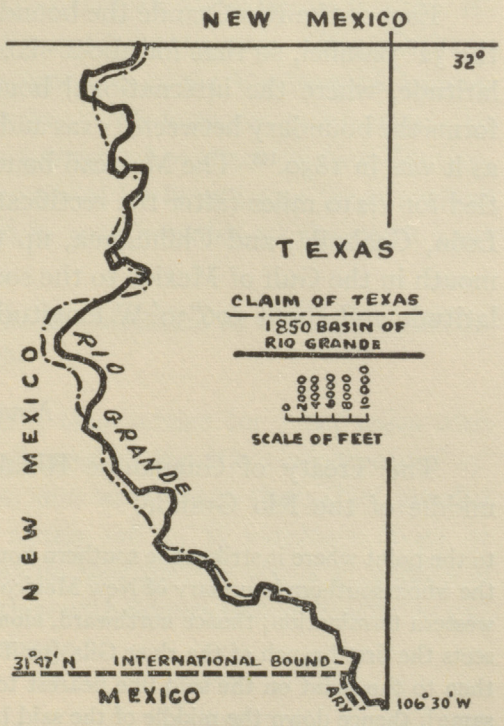
[134] *U. S. For. Rel.*, 1911, p. 594. *Amer. J. Int. Law*, V (1911), 826–832.

[135] *U. S. For. Rel.*, 1911, p. 587. *Amer. J. Int. Law*, V (1911), 813–826.

[136] *Amer. J. Int. Law*, V (1911), 709–714.

[137] *U. S. For. Rel.*, 1911, pp. 572–605; 1912, p. 706; 1913, pp. 957–977.

Under a *modus vivendi* proposed by the United States, March 22, 1910, and accepted by Mexico, June 9, 1910, an officer of the United States investigated *prima facie* Mexican titles and actual possession prior to March 15, 1910, along the whole of the Rio Grande boundary and decided what lands were proper subjects of litigation in the courts of Texas and of the United States.[138] The International Boundary Commission announced in 1928 that it had reached unanimous final decisions in cases involving title to forty-two tracts, comprising about four thousand acres, along the border.[139] Further difficulties with the Rio Grande Channel and study and reports by the International Boundary Commission resulted in the signing at Mexico City on February 1, 1933,[140] of a convention for rectification which provided (Article 1) for the carrying out of rectification works described in Minute 129 of the International Boundary Commission of July 31, 1930, for straightening the river channel in the El Paso-Juárez Valley, from Land Monument No. 1 at El Paso-Juárez to the Box Canyon below Fort Quitman (65 miles below El Paso), at about 30°59′ N latitude, 105°31′ W longitude, decreasing this part of the channel in length from 155 to 88 miles and confining it between two parallel levees, with general flood control and a detention dam at Caballo, Sierra County, New Mexico. It provided also that:



Art. 6. For the sole purpose of equalizing areas, the axis of the rectified channel shall be the international boundary line. The parcels of land that, as a result of these cuts or of merely taking the new axis of the channel as the boundary line, shall remain on the American side of the axis of the rectified channel shall be the territory and property of the United States of America, and the territory and property of the United Mexican States those on the opposite side, each Government mutually surrendering in favor of the other the acquired rights over such parcels.

[138] Cordova *v.* Grant (1919), 248 U. S. 413, 39 S. Ct. 138, 63 L. Ed. 334. *Amer. J. Int. Law*, XIII (1919), 348.

[139] State Dept., *Press Release*, 1928. *Amer. J. Int. Law*, XXII (1928), 643.

[140] Ratifications exchanged at Washington, Nov. 10, 1933. 48 Stat. L. II, 1621. *U. S. Treaty Series*, No. 864. *Treaties of the U. S.* (Malloy, 1938), IV, 4462. 136 *British and Foreign State Papers* 755. *Amer. J. Int. Law*, XXVIII (1934), Supp., 98; XXXI (1937), 44–54. *Trats. y Convs. Vig.* (Mexico, 1938), VI, 79. *Mem. de la Sec. de Rels. Ext.* (Mexico, 1933), 51.

In the completed rectified river channel — both in its normal and constructed sections — and in any completed portion thereof, the permanent international boundary shall be the middle of the deepest channel of the river within such rectified river channel.

By an exchange of notes dated September 8, 1933,[141] it was agreed that this convention did not alter the provisions of conventions then in force concerning the utilization of water from the Rio Grande.

East of the Rio Grande the boundary between Texas and New Mexico is on the 32° parallel, so that for about sixteen miles south from this line to 31°47′ N latitude, where the international boundary leaves the Rio Grande, that river forms the boundary between Texas and New Mexico, by the middle of the channel as it was in 1850.[142] The Mexican boundary with Texas is thus theoretically settled for 1,210 miles (after the rectification shortening), with Tamaulipas, Nuevo León, Coahuila, and Chihuahua, up the channel of the Rio Grande from the mouth in the Gulf of Mexico to the southeast corner of New Mexico at 31°47′ N latitude and about 106°30′ W longitude.

New Mexico

The Treaty of Guadalupe Hidalgo of 1848[143] ran the boundary up the middle of the Rio Grande,

to the point where it strikes the southern boundary of New Mexico; thence westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence northward, along the western line of New Mexico, until it intersects the first branch of the river Gila [or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same]; thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado.

The Territory of New Mexico was created in 1850, with the southern boundary

beginning at a point in the Colorado river where the boundary line with the Republic of Mexico crosses the same; thence eastwardly with the said boundary line to the Rio Grande; thence following the main channel of said river to the parallel of the 32nd degree of north latitude.

The Gadsden Purchase of 1853[144] added a parcel south of New Mexico from the Rio Grande to the Colorado River bounded:

[141] 48 Stat. L. II, 1668. *Treaties of the U. S.* (Malloy, 1938), IV, 4486. 136 *British and Foreign State Papers* 764.

[142] New Mexico *v.* Texas (1927), 275 U. S. 279, 48 S. Ct. 126, 72 L. Ed. 380; modified (1928), 276 U. S. 558, 48 S. Ct. 344, 72 L. Ed. 699; (1931), 283 U. S. 788, 51 S. Ct. 357, 75 L. Ed. 1415. Crawford *v.* White (1930), 25 S. W. (2d), 629; cert. denied (1931), 283 U. S. 823, 51 S. Ct. 346, 75 L. Ed. 1437.

[143] See Note 102, *supra*.

[144] See Note 103, *supra*.

up the middle of the Rio Grande to the point where the parallel of 31°47′ north latitude crosses the same; thence due west 100 miles; then south to the parallel of 31°20′ north latitude; thence along the said parallel of 31°20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado river 20 English miles below the junction of the Gila and Colorado rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

This line was run and marked in 1855 by a commission under Major William H. Emory, and rerun and marked by another commission in 1891. The Territory of New Mexico was reduced in 1863 by the formation of the Territory of Arizona out of all that part west of a line running due south from the point where the southwest corner of Colorado touched the northern boundary of New Mexico. The enabling act of 1906 for New Mexico provided for boundaries "as at present described"; and New Mexico was admitted in 1912 bounded on the south from the main channel of the Rio Grande,

with the boundary line between the United States and Mexico to its intersection with the 32nd meridian of longitude west from Washington.

The Mexican boundary with New Mexico is thus settled for 179.5 miles with Chihuahua from the middle of the main channel of the Rio Grande at 31°47′ N latitude, and near 106°30′ W longitude, due west along the 31°47′ parallel 100 miles, then south on the meridian of nearly 108°13′ W longitude about 32 miles to the parallel of 31°20′ and then west on that parallel about 47.5 miles in all, with Chihuahua to near 108°30′ W and then with Sonora to near 109°03′01.95″ W longitude, at the southeast corner of Arizona.

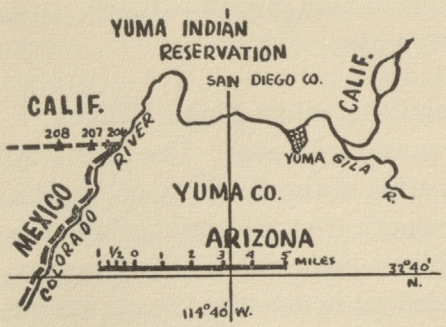
Arizona

The Territory of Arizona was separated from that of New Mexico in 1863, after the addition of the Gadsden Purchase,[145] and was bounded on the south from the New Mexico line, running due south from the southwest corner of Colorado, west by the parallel of 31°20′ north latitude to the meridian of 111° W longitude, then in a straight line to a point on the Colorado River twenty miles below the junction of the Gila, and then up the middle of the Colorado to the middle of the Gila. This line was run and marked in 1855 by a commission under Major William H. Emory, and rerun and marked by another commission in 1891.[146] Because the Colorado River below the mouth of the Gila River runs west and even north before it turns southwest, it intersects again the line running west 4.5°

[145] See Note 103, *supra*.

[146] *U. S. For. Rel.*, 1874, p. 755; 1887, pp. 871–881.

south from mid-channel opposite the mouth of the Gila, and this lower intersection has been taken as the northeastern corner of the international boundary line. The enabling act of 1906 for Arizona provided for boundaries "as at present described," and Arizona was admitted in 1912 with the foregoing southern boundary. The Mexican boundary with Arizona is thus settled for 372.5 miles with Sonora from the southwest corner of New Mexico at 31°20′ and near 109°03′01.95″ W longitude due west along the 31°20′ parallel about 119.4 miles to 111° W longitude, then northwest about 234 miles to the middle of the Colorado River and up the middle of that river 19.1 miles to its intersection with a line running west 4.5° south from the middle of the junction of the Colorado and the Gila rivers, just above Yuma, Arizona, near 32°40′ N latitude, 114°40′ W longitude.



California

The Treaty of Guadalupe Hidalgo of 1848 [147] provided that the boundary should run down the middle of the Gila River,

> until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean. . . . And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila where it united with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja . . . and published at Madrid in the year 1802.

The constitution of 1849 under which California was admitted as a state in 1850 [148] described the southern boundary as running,

> down the middle of the channel of the Colorado river to the boundary line between the United States and Mexico as established by the treaty of May 30, 1848; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast. . . . Also all the islands, harbors and bays along and adjacent to the Pacific Coast.

[147] See Note 102, *supra*.

[148] 35 *British and Foreign State Papers* 1133. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 285.

Jacob P. Leese of Monterrey, California, formed an exploitation company of San Francisco business men and in March 1864 [149] obtained from Mexico a concession to colonize Baja California between 31° and 24°20′ N latitude with not fewer than two hundred families within five years; but after extensions and delays the company did not pay the $100,000 required as the price of the lands, and the concession was finally abandoned in 1872. Floods in the Colorado River require levees or other regulation to defend the Imperial Valley in San Diego County, California, to be built in Baja California, Mexico; [150] since 1898 there have been diplomatic negotiations for an international arrangement, but no agreement has yet been signed. An earthquake in the Imperial Valley region in July 1940 shifted the border between Calexico and Mexicali more than ten feet, but engineers have been unable to agree in which direction. The 1848 treaty made no mention of the islands adjacent to the coast, but since 1850 California has been claiming and exercising jurisdiction over San Clemente Island, near 32°50′ N latitude, 118°30′ W longitude, and all others farther north to the Oregon line, with the apparent approval of Congress and the United States Supreme Court; and Mexico may be considered after the lapse of ninety years to have acquiesced in the claim.

The Mexican boundary with California is settled for 140.4 miles in three courses with Baja California, from the Arizona line in mid-channel of the Colorado River at its intersection with a line coming west 4.5° south from the middle of the junction of the Colorado and the Gila rivers, continuing in an extension of that line west 4.5° south to near 116° W longitude, then across the foot of fractional township 18 south, range 9 east, in a jog of about six miles west 15° south, and thence in a line west 5° south to the Pacific Ocean, at 32°32′ N latitude, 117°07′30″ W longitude, and in continuation of that line west 5° south three English miles out into the water.

[149] "La Concesión Leese," *Arch. Hist. Dipl. Mex.* (Mexico City, 1924), Num. 12.

[150] *U. S. For. Rel.*, 1911, pp. 525–565; 1912, p. xviii; 1913, pp. 977–993; 1921, II, 515–522. *Tex. L. Rev.*, XVII (1938), 27–61.

CHAPTER II

ISLAND POSSESSIONS

1. Amelia Island

AMELIA ISLAND, called by the Spaniards Guale, in the Atlantic, close to the north end of the coast of Florida, between St. Mary's and Nassau rivers and Cumberland and Nassau Sounds, at about 30°36′ N latitude, 81°25′ W longitude, and bearing the town of Fernandina, thirty-six miles southeast of Jacksonville, is about twenty-two miles long and from one-half to one and one-half miles wide. It formed by discovery and occupation a part of the Spanish possessions in Florida, and Pedro Menéndez de Avilés, founder of St. Augustine, erected a fort on the island in 1567. Soon after General James Edward Oglethorpe founded Georgia, in 1733, he put a temporary military guard on the island and named it Amelia. It was administered by the governor-general of Cuba until by the Treaty of Paris, February 10, 1763,[1] Spain ceded to Great Britain Florida and all territory Spain possessed east and southeast of the Mississippi, with specific mention of the Fort of St. Augustine and the Bay of Panzacola. By the Treaty of Versailles, September 3, 1783,[2] Great Britain gave both East and West Florida to Spain, who in 1808 laid out a fort about one mile from the present site. The island was a rendezvous for contraband runners and smugglers until captured by General George Matthews for the United States on March 17, 1812.[3] Spain continued to hold the Floridas in nominal sovereignty until their cession to the United States by the Treaty of Washington, February 22, 1819.[4]

The revolts and struggles for independence of the Spanish provinces in America, beginning in Colombia and Venezuela in 1810, excited some sympathy and more cupidity in various adventurers and soldiers of fortune in the United States, complicated at times by political plans among persons in slave-holding states whom Great Britain's efforts for the universal abolition of slavery were beginning to cause to foresee eventual complications under the United States flag. After general public understanding that Spain would before long cede the Floridas to the United States, and to forestall such cession by personally advantageous independence, Gregor M'Gregor, captain in the British army till 1805, officer under Miranda in New Granada and Cartagena, 1813–15, obtained from

[1] See Chap. I, Sec. 16, Note 79, *supra*.
[2] See Chap. I, Sec. 16, Note 82, *supra*.
[3] *American State Papers*, Class I, *For. Rel.* (Washington, 1858), V, 829–834.
[4] See Chap. I, Sec. 16, Note 90, *supra*.

purported agents of Venezuela, New Granada, Mexico, and Río de la Plata [5] in Philadelphia on March 31, 1817, a commission as General of Brigade in the service of the United Provinces of New Granada and Venezuela, and made himself general-in-chief of an army destined to effect the independence of the two Floridas, said to have been first planned in August 1816 with some rumored connection with Lord Cochrane, fighting for Chile on the Pacific. After seeking with Colonel Woodbine money and other support in Baltimore in May 1817 he sailed with his creole second wife (a cousin of Bolívar) and a party of armed men in several small vessels for Amelia Island, where after a brief parley he obtained from Captain Francisco Morales of the regiment of Cuba, commandant of the island, the surrender on June 29, 1817, of the garrison, with all arms and munitions. He proclaimed the independence from Spain of the Republic of the Free Floridas, and set up a local government, under the M'Gregor colors, a white flag with a green or black St. Andrew's cross. On August 21, 1817, he proclaimed from Fernandina a blockade of the possessions of the king of Spain in East and West Florida from the south part of Amelia Island to the river Perdido; and granted, as on September 1, 1817, to the master of the schooner *Lady M'Gregor*, 199 tons, letters of marque to cruise for twelve months against all vessels and ports of the Spanish nation. Difficulties soon arose from the arbitrary nature of his rule, and after he had spent all his money and Sheriff Hubbard from Savannah had stirred up disaffection, in September 1817 M'Gregor, with his wife, sailed on the brig *M'Gregor*, and Woodbine on his own schooner, the *Morgiana*, for Nassau, New Providence, in the Bahamas, whence in December 1817 M'Gregor went to Liverpool. He led a disastrous expedition of four hundred men against Portobelo in April 1819 and appears in 1823 on the Mosquito Coast, and later in Caracas, styling himself the Inca of New Granada. After a struggle with Hubbard, Luis de Aury, captain in the navy of the Independent States of Mexico and New Granada, and in July 1817, governor of the province of Texas under Mexico, with a handful of French and colored soldiers from New Orleans became the political and military chief of the Island of Amelia, and raised the Mexican flag. Since President James Monroe in Washington was anxious to allow no breach of neutrality or other duty to upset the delicate negotiations then in course with Spain, and unwilling to permit an independent center for smuggling and the slave trade to exist at the very border of the United States, he ordered United States forces to take possession of Amelia Island and expel the pretended insurrectionists. Major James Bankhead with about two hundred men from Point Petre, Georgia, and Commodore John D.

[5] Disavowed by the governments of Buenos Aires and Venezuela and disapproved by Chile, when informed in 1818.

6 *British and Foreign State Papers* 569, 702, 761, 1060.

Henley on the *John Adams* arrived at Amelia Island on December 22, and on December 23, 1817, General Aury surrendered Fernandina to a landing party, the Mexican flag was hauled down, and that of the United States raised. After the surrender, Aury commissioned Vicente Pazos, his agent, to explain matters to the United States and demand reparation for the injured rights of the states.[6] Pazos had no success with his mission, but Aury is heard of again, on the Mosquito Coast in 1818. In theory, the United States troops were, until the transfer of 1821, holding the island in trust for Spain. There had been talk by M'Gregor and Woodbine of landing at Espiritu Santo (Tampa Bay), taking command of fifteen hundred Seminole Indians, and marching across to capture St. Augustine by attack from the west; but nothing further was heard of the proposed expedition. Amelia Island was included without comment when the Territory of Florida was erected in 1822, and in the state when Florida was admitted to the Union in 1845. In 1861 Fort Clinch was seized by the Confederates, and the island became a center for blockade running until captured by a Federal naval force in 1862. The island now forms part of Nassau County, of the state of Florida.

2. Bay Islands

This group of small islands in the Gulf of Honduras off the north coast of Honduras at about 16°20′ N latitude, 86° W longitude, includes: Roatan or Coxin's Hole, the largest, thirty miles long by nine miles wide, about forty miles northwest from Trujillos; Guanaja or Bonaca, next in size, nine miles long by five miles wide; and the smaller Barbareta, Elena, Morat, Puercos, and Utila Islands. Guanaja was discovered and named Isla de los Pinos by Columbus on his fourth voyage on July 30, 1502. In the seventeenth century the islands were occupied by the British, and Caribs were brought by them from the mainland to cut logs. In 1742 the British erected forts on Roatan which, with the English settlements there and on Guanaja and Utila, Philip V on May 19, 1744, ordered the governor of the province of Honduras to destroy.[1]

There were allegations of subsequent abandonment by Great Britain, but in 1835 and again in 1841 the British superintendent of Belize landed on Roatan, hauled down the Honduran flag, and raised that of Great Britain. Pursuing the somewhat inept foreign policy of Palmerston's successors, the government of Lord Aberdeen on March 20, 1852 [2] (proclaimed July 17, 1852), erected the Bay

[6] *State Papers of the United States* (3d ed., Boston, 1819), XII, 388–435. *American State Papers*, Class I, *For. Rel.* (Washington, 1834), IV, 130, 183–202. 4 *British and Foreign State Papers* 814–817; 5 *ibid.* 748–800.

[1] *Disps. Compls. de las Leyes de Indias* (Madrid, 1930), I, 55.

[2] *Parl. Papers*, 1856 (15 & 16 Vict.), H. C. XLIV, No. 141, 1–5; *ibid.* LX, No. 2052, 223. 41 *British and Foreign State Papers* 156. S. Rep. Com. 407, Ser. 671, 32d Cong., 2d Sess. (Washington, 1853). Martens, *Nouv. Rec. Gén. de Traités*, XV (1857), 204.

Islands into a British colony under the governor of Jamaica. The United States at once took notice of the apparent step toward closer control [3] and added the subject to her controversy with England over the proper interpretation and application of the Clayton-Bulwer Treaty of 1850,[4] insisting among other things that the treaty required complete abandonment by England of Bay Island colony and the return of all the islands to the sovereignty of Honduras. The diplomatic argument lasted until Great Britain signed with Honduras at Comayagua on November 28, 1859,[5] a treaty which provided:

Art. 1. Taking into consideration the peculiar geographical position of Honduras, and in order to secure the neutrality of the islands adjacent thereto, with reference to any railway or other line of interoceanic communication which may be constructed across the territory of Honduras on the mainland, Her Britannic Majesty agrees to recognize the Islands of Ruatan, Guanaca, Elena, Utile, Barbarete, and Morat, known as the Bay Islands and situated in the Bay of Honduras, as a part of the Republic of Honduras. . . .

The Republic of Honduras engages not to cede the said islands, or any of them, or the right of sovereignty over such islands, or any of them, or any part of such sovereignty, to any nation or state whatsoever.

Art. 2. Her Britannic Majesty engages, subject to the conditions and engagements specified in the present Treaty, and without prejudice to any question of boundary between the Republics of Honduras and Nicaragua, to recognize as belonging to and under the sovereignty of the Republic of Honduras, the country hitherto occupied or possessed by the Mosquito Indians within the frontier of that Republic, whatever that frontier may be.

The British Protectorate of that part of the Mosquito territory shall cease 3 months after the exchange of the ratifications of the present Treaty, in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of said Treaty.

The general Mosquito Coast appeasement by Great Britain by execution of this and the other two Wyke treaties, of 1859 with Guatemala and of 1860 with Nicaragua, greatly pleased the United States as a triumph of the Clayton-Bulwer Treaty. It marked, incidentally, an achievement unparalleled in the history of the diplomatic relations of the United States with Great Britain,[6] since it resulted in the only voluntary withdrawal of Great Britain from any land over which the British flag had once flown. The islands were restored to the possession of Honduras in April 1861.[7] With the Caxones or Hobbies Islands, at about 16°10′ N latitude, 83°20′ W longitude, seventy-five miles north of Lake Gracias á Dios,

[3] *Dipl. Corr. of the U. S.* (Manning, Washington, 1936), VII, 100, 120, 126–136, 151, 506, 514, 516, 525, 549, 559, 613, 641, 691, 693. 42 *British and Foreign State Papers* 186; 47 *ibid.* 661–677; 50 *ibid.* 143–328. Moore, *Dig. Int. Law* (Washington, 1906), III, 140, 157, 163, 166, 169, 181.

[4] See Chap. I, Sec. 12, *supra*.

[5] Signed by Sir Charles Lennox Wyke for Great Britain and Francisco Cruz for Honduras. Ratifications exchanged at Comayagua, April 18, 1860. 49 *British and Foreign State Papers* 13. Martens, *Nouv. Rec. Gén. de Traités*, XVI (1860), II, 370.

[6] *Amer. Secs. of State* (New York, 1928), VI, 64, 70, 218, 362.

[7] *U. S. Monthly Consular Reports*: W. C. Burchard, Dec. 1, 1882, H. Misc. Doc. 39, XI, Ser. 2127, 11–14; 47th Cong., 2d Sess. (Washington, 1882); John B. Richardson, June 1904, H. Doc. 650, LIII, Ser. 4679, 691–692, 58th Cong., 2d Sess. (Washington, 1904). 65 *British and Foreign State Papers* 731

and Vivorillo Cay,[8] thirty-three miles north of the entrance to Caratasca Lagoon, they now form the department of Islas de la Bahía, Honduras.

3. Cayman Islands

These three low-lying islands in the Caribbean Sea, with a total area of 104 square miles, at 19°48′ to 19°15′ N latitude and 79°25′ to 81°35′ W longitude, are a dependency of Jamaica, which is 178 miles to the southeast. Grand Cayman is 17 miles long by 4 to 7 miles wide; Little Cayman, 60 miles to the northeast, is 9 miles long by 1¼ miles wide, and Cayman Brac,[1] 7 miles more to the east and about 130 miles west of Cape Cruz, Cuba, is 11 miles long by 1¼ miles wide.[2] They are the only projecting peaks of the submarine Cayman Ridge running from the southern end of Cuba west-south-west 400 miles to Misteriosa Bank, Honduras. The two eastern islands were discovered by Columbus on his fourth voyage, May 10, 1503, and named by him Las Tortugas, from the great number of turtles seen in the surrounding seas, but they were never occupied or colonized by the Spaniards.

British and French naval vessels visited the islands to obtain turtles for food, and on June 26, 1655, Admiral William Penn went there in the *Swiftsure* for that purpose. Oliver Cromwell's proclamation of October 10, 1655, to encourage emigration to Jamaica probably sent the first settlers to the Caymans, and in 1667–71 they are frequently mentioned by the governors of Jamaica. February 28, 1734, is the date of the first patent for land in the islands recorded at Jamaica, and from 1750 on grants are numerous. Grand Cayman was visited by severe hurricanes on August 28, 1785, and in 1845. The islands are administered by a commissioner under the governor of Jamaica.[3]

In 1914[4] Colombia tried to get the British government to stop excessive fishing by Cayman islanders on the banks and cays of the Archipelago of San Andrés y Providencia; and on May 6, 1916,[5] Great Britain signed with Nicaragua at Guatemala City a treaty to regulate turtle fishing in Nicaraguan territorial waters and cays by vessels belonging to the Cayman islanders.

[8] *U. S. For. Rel.*, 1888, I, 119, 132. Moore, *Dig. Int. Law* (Washington, 1906), I, 580. *Mem. de la Sec. de Rels. Ext. de Honduras, 1920–21* (Tegucigalpa, 1922), 20, 193–196.

[1] *Brac*, a cliff or crag.

[2] George S. S. Hirst, *Notes for a History of the Cayman Islands* (Jamaica, 1910).

[3] Cf. 26 & 27 Vict., c. 31 (1863). 53 *British and Foreign State Papers* 267.

[4] *Trats. de 1913* (Bogotá, 1914), 343.

[5] Ratifications exchanged at Guatemala City, May 4, 1917. *British Treaty Series* 8 (1917). 110 *British and Foreign State Papers* 528.

4. Clipperton Island

Clipperton Island in the Pacific is a low, treeless, uninhabited lagoon reef, 3.5 miles long by 2.5 miles wide, at 10°17′ N latitude, 109°10′ W longitude, about 670 miles southwest of Guerrero, Mexico, and west of Costa Rica. The existence on the southern edge of a jagged rocky mass thirty-five feet high and a thousand feet around its base has caused some to consider the island as probably not at bottom a coral formation but a volcano rim. Mexico declares it to be the same as La Pasión or Medanos Island, discovered by Spanish sailors in the sixteenth century, but the identification is not certain. The island was seen in 1705 by an English adventurer, Captain Clipperton, and named for him, but not claimed by Great Britain. French navigators on *La Princesse* and *La Decouverte* saw and described it in 1711, but France made then no occupation or claim. On April 8, 1858, Emperor Napoleon III approved a concession, never used, to M. Lockhart of Havre to take guano from the island and sent to it Lieutenant Victor Le Coat de Kervéguen of the French navy on the merchantman *L'Amiral*, which approached within half a mile of the island; from her deck on November 17, 1858,[1] the lieutenant formally proclaimed French sovereignty in the name of Napoleon III. A landing was made without leaving any mark of sovereignty, and *L'Amiral* sailed away on November 20, 1858; but the event was reported to the French consulate at Honolulu, and the proclamation was published in English in the *Polynesian* of Honolulu on December 18, 1858. About 1860 Mexico is reported to have sent some thirty soldiers and women camp followers to garrison the island. They were to be relieved annually, but were neglected or forgotten until 1890, when a relief party is said to have found one man and two women alive. There is no mention of this episode in the Arbitral Award.

On November 24, 1897, Lieutenant Terrier of the French Pacific Naval Division, under orders to inspect the island, found on it three men, who hoisted the United States flag and said they were collecting guano for the Oceanic Phosphate Company of San Francisco, as assignee of Frederick W. Parmien. France asked for an explanation, and the United States replied on January 28, 1898, that it had granted no concession and claimed no sovereignty over Clipperton Island. Meantime Mexico, apparently without knowing of the French claim of occupation but influenced by a report in August 1897 that Great Britain had designs on the island, sent out the gunboat *Demócrata* under Captain Teófilo Genesta, who on December 13, 1897, landed a party, found the same three men, and caused them to lower the United States flag and raise in its place that of Mexico. The gunboat

[1] Moore, *Dig. Int. Law* (Washington, 1906), I, 573.

left on December 15, bringing off at their request Frederic Nelson, English, and Henry Smith, German; Theodor Gosmann, German naturalized United States citizen, in charge, wished to remain, and sent an unsealed report to the company in San Francisco.

On January 13, 1898, France informed Mexico of her claim to the island, to which Mexico replied that if France's rights were established, she would not maintain her occupation. Mexico in April 1898 [2] leased guano rights on the island to the Pacific Islands Company, Ltd., of London, to which France again protested, and Mexico replied on November 30, 1898, denying the validity of the French claims. The matter rested until August 1906, when it was taken up in a diplomatic correspondence which resulted in the signature at Mexico City on March 2, 1909,[3] of a convention providing:

> Art. 1. The existing dispute between the high contracting parties concerning the sovereignty of Clipperton island shall be settled by arbitration.
>
> Art. 2. Upon the proposal of the Mexican Government, accepted by the French Government, the two shall address His Majesty Victor Emmanuel III, King of Italy, and ask him to accept the role of arbiter.
>
> Art. 3. The two Governments agree to observe faithfully the arbitral decision which shall be rendered by virtue of the present Convention.

King Victor Emmanuel accepted on August 21, 1909; the cases were eventually submitted; and on January 23, 1931,[4] the king rendered his award, which, after reciting at length the historical facts, declared that "the sovereignty of Clipperton Island belongs to France from the date of November 17, 1858." The Mexican claim was rejected for lack of proof of prior Spanish discovery and, in any event, no effective occupation by Mexico before 1858, when the island was therefore *territorium nullius*, and the French occupation then was sufficient and legally continuing.

Considerable opposition to the award developed in Mexico, with an allegation that the decision had been influenced by an Italian desire for naval concessions from France in the Mediterranean. On November 14, 1932,[5] the Mexican Senate postponed indefinitely action on a bill to carry out the award, on the reported ground of a desire not to embarrass the incoming Roosevelt administration in the United States with a possible issue with France over a violation of the Monroe Doctrine, but some Mexican statesmen were careful to point out that Mexico

[2] *Isla de la Pasión llamada de Clipperton* (Mexico City, 1909).

[3] Ratifications exchanged at Mexico City, May 9, 1911. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., V (1912), 8. *Rev. gén. de dr. int. pub.*, XV (1908), 610; XVII (1910), docs. 1. *Arch. Dipl.*, 3e Sér., CXIV (1910, IV), 165; CXVII (1911), 23; CXIX (1911), 21; CXXII (1912), 173. Clunet, *J. de dr. int. privé*, XXXIX (1912), 643.

[4] 134 *British and Foreign State Papers* 842. *Amer. J. Int. Law*, XXVI (1932), 390; XXVII (1933), 130; XXIX (1935), 463. *Rev. gén. de dr. int. pub.*, XXXIX (1932), 129.

[5] *Current History*, XXXVII (1933), 466.

herself had never recognized as valid any portion of that doctrine. The Mexican Congress finally adopted on January 10, 1934,[6] an amendment striking La Pasión Island out of Article 42 of the 1917 constitution, describing the national territory, and Mexico withdrew her sovereignty during the year. When France landed sailors to claim the island in January 1935, it was found that all the guano had been removed. On July 21, 1938, President Franklin D. Roosevelt arrived at the island on a trip from San Diego to Balboa on the U.S. cruiser *Houston*.

5. Cocos Island

This Pacific island, called Coco by Costa Rica, in 5°30′ N latitude, 87° W longitude, 3 miles wide with a circumference of 13 miles, having two good harbors in Chatham and Wafer Bays, 300 miles southwest of Costa Rica and 550 miles west southwest of Panama City, formerly a whaling base, now in good tuna-fishing waters, is one of the strategic points of defense for the Panama Canal. An old legend says that treasure was buried there by the corsair Benito Bonito in 1818–19, and more by one of his lieutenants in 1826; and another story has it that wealthy Spaniards, including the treasurer of the Cathedral, fleeing from Lima, Peru, in 1821 with gold and jewels on the *Mary Dier* were murdered in their bunks by the crew under an English Captain Thompson and that twelve boat loads of treasure worth $30,000,000 were afterwards buried on Cocos. In 1882 [1] the island was prescribed as a forced residence for five or ten years, respectively, for anyone who destroyed public forests or drove out or otherwise persecuted native Indians. August Gissler [2] on July 2, 1891, made a contract for colonization of the island with one hundred German families, superseded on April 11, 1894, by another contract for fifty families to be settled within five years; [3] but a further attempt at modification on December 4, 1895, was disapproved.[4]

President Federico Tinoco Granados of Costa Rica was reported to have made a tentative suggestion of a sale of the island to the United States in connection with Panama Canal defense and as part consideration for his resigning the presidency in 1919.[5] On March 1, 1922,[6] Costa Rica, being informed of a law proposed in the Congress of Colombia assigning the islands of Malpelo [7] and Los Cocos to the department of Valle de Cauca, inquired of Colombia if the Cocos

[6] *Diario Of.*, LXXXII, Num, 15, 205 (Jan. 18, 1934).

[1] Decr. 14 of May 27, 1882. *Col. de Leyes de 1882* (San José, 1883), 74.

[2] Author of "Twenty Years on Cocos Island." By his will dated Feb. 5, 1929, and filed in the New York County Surrogates Office on Nov. 13, 1935, he purported to dispose of the western half of the island.

[3] Decr. 2 of April 17, 1894. *Col. de Leyes de 1894* (San José, 1894), 164.

[4] Decr. 2 of Aug. 11, 1896. *Col. de Leyes de 1896* (San José, 1897), 329.

[5] *U. S. For. Rel.*, 1918, p. 253.

[6] *Informe del Min. de Rels. Ext. al Congreso de 1922* (Bogotá, 1922), 15.

[7] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 266.

Island referred to was the same as Coco Island possessed by Costa Rica in the Pacific Ocean, and Colombia answered on March 18 that the project had not become law and that it did not refer to the Coco Island situated west of Burica Point, which Colombia did not claim, in conformity with the Loubet award of 1900,[8] which said:

> In the Pacific Ocean Colombia shall likewise possess, starting from and including the Burica islands, all islands situated east of the Point of that name; and those lying west of that Point are adjudicated to Costa Rica.

There are a few inhabitants remaining from treasure-hunting expeditions or other adventurers, and pigs, goats, rabbits, chickens, ducks, cats, and other small animals washed ashore from shipwrecks or left there for experimental purposes.[9] The most ambitious recent treasure hunt was sponsored by a British chartered company, Treasure Recovery, Ltd., promoted by Captain Charles William Augustus Arthur and his wife Alice, in 1934, to be guided by a Belgian, Peter Bergmans, who was shipwrecked on the island in 1929. They raised from Lieutenant Commander Douglas Dixon, R.N., retired, and by public subscription £40,000, of which nine-tenths was spent on "administration" in London; and in September 1934 sent out an expedition under Commander Frank A. Worsley and Stratford D. Jolly in the yacht *Queen of Scots*, chartered from Anthony Drexel, Jr., until January 2, 1935, afterwards replaced by the *Veracity*, 150 tons. The first concession ran until October 1935, but the company's lawyer in the prospectus had announced that the title to the island was in doubt, as Costa Rica had claimed nothing west of Coiba Island in the arbitration of the boundary with Colombia in 1900, and this with other injudicious actions led the Costa Rican officials to withdraw their approval. Eighteen members of the party, including one woman, were arrested at their camp on Wafer Bay on October 26, 1934, by Costa Rican police, and taken in the steamer *Nuevo Panama* to Puntarenas on the mainland. They were freed there three days later but were sent to Panama and thence returned to England. After some court difficulties at home, some of the same people, as British Tours, Ltd., obtained a new concession for one year, to April 30, 1936, and sent out a smaller expedition under Commander F. C. Finnis and Eric A. Hankey, with a forty-five-ton fishing boat, to work under the eyes of a police guard of ten men to be paid for by the expedition, and a promise to give Costa Rica one-third of anything found. After money difficulties and dissensions among the workers, the concession expired without anything having been found, and the British adventurers were gradually repatriated.

[8] See Chap. 1, Sec. 2A, *supra*.

[9] As by Julius Fleishmann of Cincinnati, Ohio.

In July 1935 President Ricardo Jiménez Oreamuno took occasion publicly to deny rumors that Costa Rica was negotiating for the sale of the island to the United States, but added that any offer from the United States would receive consideration. Several laws prohibit the alienation of any of the islands which form part of the territory of the republic.[10] In 1936 Costa Rica issued a series of postage stamps in eight denominations, followed by two more, bearing a map of the island.[11] President Franklin D. Roosevelt has visited the island four times: July 13–14, 1934, on his way from Annapolis to Hawaii on the U.S. cruiser *Houston*; October 9–11, 1935, in the course of a trip from San Diego to Balboa on the same cruiser; August 1–3, 1938, on another trip from San Diego to Balboa on the *Houston*, and February 20–23, 1940, on a fishing expedition on the cruiser *Tuscaloosa*. A treasure-hunting expedition fitted out by a southern California syndicate, headed by two grandsons of the late Alexander Forbes, world traveler, sailed from Balboa Harbor, California, in December 1939 under a contract to give Costa Rica 25 per cent of anything found, with the National Museum director and six policemen to keep track of the scientists, and reported on January 5, 1940, that treasure had been located; but nothing more has been heard of it. The island has been suggested for use as a penal colony, for a luxurious gambling casino, or for sale or lease to the United States as a part of the far-flung defenses of the Panama Canal.

6. Coiba Island

This island at about 7°25′ N latitude, 81°45′ W longitude, 15.5 miles southwest of Bahía Honda, Panama, is 24.8 miles long and 15.5 miles wide, rising to a height of 1,000 feet near its center. It is the largest of the islands as to which possible claims by Costa Rica were quieted by the Loubet award of 1900 [1] which said, "In the Pacific Ocean Colombia shall likewise possess, starting from and including the Burica islands, all islands situated east of the point of that name." Panama claimed in her constitution of 1904 [2] to have succeeded to Colombia's rights. Five of the eight provinces into which Panama is divided include the islands off their shores.[3] In the Caribbean, Bocas del Toro Province has the islands of Bastimentos, Carenero, Colón, Cristóbal, Fresco, Popa, and smaller ones eastward to a point opposite the mouth of the river Calobévora. In the Pacific, from east to west, Panama province has Caimán, Las Perlas Archipelago,

[10] Decr. 11 of Nov. 22, 1905. *Col. de Leyes de 1905* (San José, 1905), II, 460. Approved by Ley 17 of May 29, 1906. *Col. de Leyes de 1906* (San José, 1906), I, 271. Ley 60 of Aug. 13, 1914. *Col. de Leyes de 1914* (San José, 1915), II, 192. Fiscal Code, Article 510 as amended by Law 11 of Oct. 22, 1926. *Col. de Leyes de 1926* (San José, 1928), II, 236.

[11] Decr. 3 of Jan. 27, 1936. *Col. de Leyes de 1936* (San José, 1937), I, 46.

[1] See Chap. I, Sec. 2A, *supra*.

[2] See Chap. I, Sec. 14, *supra*.

[3] Administrative Code (Law 1) of Aug. 22, 1916, in effect July 1, 1917; Articles 1–80.

Majagual, Majé,[4] San José, San Miguel and Taboga, Tres Hermanas, and other smaller ones off the coast of the district of Chimán; Los Santos province has the islets and keys from opposite the mouth of the river Purio to Punta Mala, in the Gulf of Panama; Veraguas province has Cébaco, Coiba, Coibita, Contreras, Gobernadora, Jicarón, Leones, Montuosa, and all the islets and cays in the Gulf of Montijo and those off the coast of the district of Las Palmas from opposite the mouth of the river Pisvá westward to the river Tabasará in the Gulf of Chiriquí; and Chiriquí province has Boca Brava, Ladrones, Parida, Secas, and all the small islets and cays in Charca Azul Bay from opposite the mouth of the river Tabasará westward to Punta Burica and the boundary with Costa Rica. By the 1903 treaty [5] Panama granted to the United States the islands of Culebra, Flamenco, Naos, and Perico in Panama Bay; and in 1920 the United States took a part of the island of Taboga.

7. Cuba

This island, discovered by Columbus on October 28, 1492, on his first voyage, and named by him Juana, and explored on his second voyage, 1493–96, lies between 23°13′ to 19°50′ N latitude and 74°07′ to 84°57′ W longitude, at a distance of 110 miles south from the Florida mainland (90 miles from Key West) across the Strait of Florida; 130 miles east from Cape Catoche, Mexico, across the Yucatan Channel; 50 miles west of Haiti across the Windward Passage, and 85 miles north of Jamaica. It is 730 miles long in a straight line from Cape Mayasí at the east end to Cape San Antonio at the west, 900 miles along the curve of a medial axis, with an average width of 50 miles, a total area of 41,634 square miles and a coast line of about 2,500 miles, excluding its smaller neighbor and possession, the Isle of Pines.[1] Circumnavigated by Sebastián de Ocampo in 1508, conquered by Diego Velásquez from Santo Domingo, landing at Baracoa in 1511, and settled early by the Spaniards, Cuba became the starting point of several of the expeditions to Central and South America, notably one to Yucatan in 1517 and Cortéz' to Mexico in 1519.[2] Father Bartolomé de Las Casas was in Cuba in 1511–12, and it was probably his observations there of the abuse and decimation of the native Caribs (who had only a short time before dispossessed the Arawaks) that launched him on his career as "Apostle of the Indians."

In 1523 the African slave trade began, and in 1544 the remaining native Indians were emancipated. The British under Admiral Sir George Pocock and the Earl of Albemarle after a siege captured Habana on August 13, 1762, and held

[4] Islands are national property, though vacant, and not subject to prescription against the state. Lucero *c.* Moreno, May 4, 1925. *Reg. Jud.* (Panama, 1925), XXIII, 493.

[5] See Chap. I, Sec. 15B, *supra.*

[1] See Sec. 11, this chap., *infra.*

[2] See Chap. I, Sec. 5, *supra.*

it until July 6, 1763, when, under the treaty of February 10, 1763, at the close of the Seven Years' War, it was returned to Spain in exchange for the Floridas.[3] An intendant of the army and the treasury was sent from Madrid to Habana, October 31, 1764; and in 1775 he had supervision of the finances of Cuba, the Windward Islands, and Louisiana. Charles III in 1777 made Cuba a captaincy-general. It remained, with Puerto Rico,[4] Guam, and the Philippines, in the power of Spain long after the continental colonies had revolted and obtained their independence, and was increasingly badly governed and used as an opportunist bonanza by grafting, rapidly changing governors and captains-general, and as a place of exile for the army and punishment for the clergy from Spain. Cuba was tentatively opened to world commerce by Spain from 1801 to 1809, and in 1818 free commerce with foreigners was definitely legalized.[5] There were numerous revolts, crushed by the army, proposed aid from Mexico in 1825,[6] and filibustering and trouble-making expeditions more or less openly aided from the United States,[7] especially those of Narciso López in 1848–51 and the *Virginius* affair in 1873.[8]

On October 10, 1868, there began at Yara the Ten Years' War, which ended, only from the exhaustion of both sides, with the peace convention of Zanjón in 1878 and the granting to Cuba of representation in the Spanish Cortes on March 1, 1878.[9] In 1886 slavery was abolished.[10] The War of Independence broke out at Baire on February 24, 1895, with Generals Calixto García, Máximo Gómez, Antonio Maceo, José Martí, and other unreconciled veterans of the Ten Years' War as leaders, and spread beyond Spain's power to put down with such unacclimated and ill-trained troops as a corrupt administration and unskilled staff could keep flowing overseas. Finally General Valeriano Weyler y Nicolau, captain and governor-general from February 11, 1896, by ordering on February 16, 1896, a reconcentration policy — of collecting men, women, and children from the country into barbed wire stockades, with little clothing or food and no sanitation, to prevent them from aiding the insurrectionists — aroused such a storm of protest around the civilized world and especially in the United States[11] that general attention and sympathy were focussed on the Cubans' plight. "Butcher" Weyler was recalled to Spain on October 31, 1897, but public indignation in and

[3] Treaty of Paris, Feb. 10, 1763; Articles 19, 20. Martens, *Rec. de Tr.*, I (1817), 104.

[4] See Sec. 18A, this chap., *infra*.

[5] 10 *British and Foreign State Papers* 865, 1034; 66 *ibid.* 1178; 75 *ibid.* 389.

[6] "Un Esfuerzo de Mexico por la Independencia de Cuba," *Arch. Hist. Dipl. Mex.* (Mexico City, 1930), Num. 32. 13 *British and Foreign State Papers* 403, 414, 424.

[7] 26 *British and Foreign State Papers* 1124, 1156; 32 *ibid.* 861.

[8] 39 *British and Foreign State Papers* 77; 44 *ibid.* 114–236; 47 *ibid.* 1265. *Amer. J. Int. Law*, XXXI (1937), 264.

[9] *Rev. de Der. Int.* (Habana, 1931), XIX, 32.

[10] 20 *British and Foreign State Papers* 1289; 34 *ibid.* 567–639; 56 *ibid.* 1306–1329; 57 *ibid.* 1166; 63 *ibid.* 437–449; 77 *ibid.* 825. *U. S. For. Rel.*, 1873, p. 1003; 1884, p. 466.

[11] 87 *British and Foreign State Papers* 733; 88 *ibid.* 845. *U. S. For. Rel.*, 1895, II, 1187–1209; 1898, pp. 558–750.

out of Congress hardly abated, and there followed demands upon Spain in the name of humanity and a strong statement in President Grover Cleveland's fourth annual message of December 7, 1896.[12] The Spanish government under Queen Regent María Cristina finally granted full autonomy by a decree of November 25, 1897,[13] but, as always with the Bourbons, too late; the blowing up of the U.S. battleship *Maine* in Habana harbor on February 15, 1898, touched off the final spark, and the United States declared war on Spain on April 20, 1898.[14] A naval battle outside Santiago harbor on July 3, 1898, which resulted in the total destruction of the Spanish squadron of four armored cruisers and three torpedo boat destroyers under Admiral Pascual Cervera y Topete and the surrender of Santiago de Cuba on July 17, 1898, brought Spain quickly to acknowledge defeat;[15] and by the Treaty of Paris, December 10, 1898,[16] she relinquished Cuba and ceded Puerto Rico, Guam, and the Philippines (for $20,000,000) to the United States. A provisional military government was set up on January 1, 1899,[17] though Cuba did not become part of the United States;[18] and after a constitutional convention had adopted a constitution[19] to which the United States Congress dictated amendments[20] (in the Army Appropriation Bill of 1901), controlling foreign policy and debts and providing for naval stations[21] that were declared in some quarters to constitute Cuba a protectorate,[22] the republic of Cuba began as a new state on May 20, 1902, with its own president[23] and Con-

[12] *Messages and Papers of the Presidents* (Richardson, 1897), XIII, 6148. *Rev. gén. de dr. int. pub.* (1928, II), XXXV, 205.

[13] 90 *British and Foreign State Papers* 309.

[14] President McKinley's message, April 11, 1898. War, April 21–Aug. 13, 1898. *U. S. For. Rel.*, 1898, pp. 750–966. 90 *British and Foreign State Papers* 864, 1038.

[15] Protocol of Peace, Washington, Aug. 12, 1898. 30 Stat. L. 1742. 90 *British and Foreign State Papers* 1049.

[16] Ratified by the United States, Feb. 6, 1899; ratified by Spain, March 19, 1899; ratifications exchanged at Washington, April 11, 1899. 30 Stat. L. 1754. *U. S. Treaty Series*, No. 343. *Treaties of the U. S.* (Malloy, 1910), II, 1690. 90 *British and Foreign State papers* 382.

[17] The United States military governors were:
General John R. Brooke, Jan. 1, 1899 to Dec. 20, 1899.
General Leonard Wood, Dec. 20, 1899 to May 20, 1902.

[18] Goodyear Tire & Rubber Co. *v.* Rubber Tire Wheel Co. (1908), 164 Fed. Rep. 869. Cuban Railroad Co. *v.* Crosby (1912), 222 U. S. 473, 32 S. Ct. 132, 56 L. Ed. 274; reversing (1912), 170 Fed. Rep. 369, 95 C.C.A. 539.

[19] 94 *British and Foreign State Papers* 554–578.

[20] The Platt Amendment; Act of March 2, 1901. c. 803. 31 Stat. L. 895 at 897. Treaty of May 22, 1903. 33 Stat. L. II, 2248. *U. S. Treaty Series*, No. 437. *Treaties of the U. S.* (Malloy, 1910), I, 362. 96 *British and Foreign State Papers* 548. *U. S. For. Rel.*, 1904, p. 243. *Amer. J. Int. Law*, IV (1910), Supp., 177; XXIX (1935), 84. *For. Aff.*, VIII (1930), 364.

[21] Agreement of Feb. 16, 1903, effective Feb. 23, 1903. *U. S. Treaty Series*, No. 418. *Treaties of the U. S.* (Malloy, 1910), I. 358. Agreement of July 2, 1903, ratifications exchanged, Oct. 6, 1903. *U. S. Treaty Series*, No. 426. *Treaties of the U. S.* (Malloy, 1910), I, 360. *U. S. For. Rel.*, 1911, pp. 110–126; 1912, pp. 293–297; 1913, p. 353. 96 *British and Foreign State Papers* 546. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXIV (1907), 338. *Rev. de Der. Int.* (Habana, 1937), XXXI, 116.

[22] *Rev. de Der. Int.* (Habana, 1939), XXXV, 247. *Tulane Law Review*, XIV (1940), 325. *Contra*: Sumner Welles, Under Secretary of State; Speech to Cuban Chamber of Commerce, New York, Dec. 19, 1939. *U. S. For. Rel.*, 1912, pp. 309–322; 1922, I, 1004–1053. *Amer. J. Int. Law*, XVII (1923), 620. *For. Aff.*, VI (1928), 231.

[23] The Cuban Presidents have been:

1 Tomás Estrada Palma, May 20, 1902 to Sept. 28, 1906. Died Nov. 4, 1908 in Santiago Province, Cuba.
2 José Miguel Gómez y Gómez, Jan. 28, 1909 to May 20, 1913. Died June 13, 1921 in New York, N.Y.
3 Mario García Menocal y Deop, May 20, 1913 to May 20, 1921. Living in Cuba, 1940.
4 Alfredo Zayas y Alfonso, May 20, 1921 to May 20, 1925. Died April 11, 1934 in Habana.
5 Gerardo Machado y Morales, May 20, 1925 to Aug. 12, 1933. Died March 29, 1939 in Miami Beach, Fla.
6 Alberto Herrera, Aug. 12, 1933 to Aug. 13, 1933.
7 Carlos Manuel de Céspedes, Aug. 13, 1933 to Sept. 5, 1933. Died March 28, 1939 in Habana.

gress.[24] After the second inauguration of President Tomás Estrada Palma on May 20, 1906, disappointed politicians made orderly administration increasingly difficult, and when the president, vice president, and entire cabinet resigned and Congress adjourned without electing any successor, the United States intervened on September 29, 1906,[25] and maintained a provisional government until January 28, 1909.[26] A negro uprising in the eastern provinces was bloodily suppressed by the army in 1912. Cuba issued a neutrality proclamation on August 5, 1914,[27] and declared war upon Germany on April 7, 1917.[28] United States sailors and marines landed at the Guantánamo Naval Station, and were quietly distributed throughout the island to protect from sabotage and labor troubles the large sugar plantations whose product was urgently needed by the Allies during the war. Ex-President José Miguel Gómez y Gómez "took to the woods" in a short-lived revolt in 1917. Cuba became a member of the League of Nations, March 8, 1920. In September 1926 it was reported in Cuba that Sr. Alberto Guani, the delegate of Uruguay to the League of Nations Assembly, had raised the question of the status of Cuba, as to sovereignty limited by the Platt Amendment; and in November 1926 the Cuban government asked Uruguay for an explanation. A break in diplomatic relations was threatened, but averted when Uruguay declared that Sr. Guani had not made the statement attributed to him.[29] A central highway, about 695 miles long from Santiago de Cuba to Pinar del Río, was built with great extravagance under President Machado, beginning in 1926,[30] and paid for, especially to Warren Brothers Company, the principal contractors, by issues of bonds not yet redeemed and still causing much difficulty in the adjustment of Cuba's debt.

General Gerardo Machado y Morales, whose term should have expired May 20, 1929, when Congress was discussing amending the constitution to provide a six-year term for the president with ineligibility for reëlection, pushed

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8 Guillermo Portela, Sept. 5, 1933 to Sept. 9, 1933. Head of Junta of Five.

9 Ramón Grau San Martín, Sept. 10, 1933 to Jan. 15, 1934. Resigned. Living in Cuba, 1940.

10 Carlos Hevia y Reyes Gavila, Jan. 16, 1934 to Jan. 17, 1934. Resigned.

11 Carlos Mendieta y Montefui, Jan. 18, 1934 to Dec. 11, 1935. Resigned.

12 José A. Barnet y Vinagres, Dec. 13, 1935 to May 20, 1936.

13 Miguel Mariano Gómez y Arias, May 20, 1936 to Dec. 24, 1936. Impeached and removed. Living in Cuba, 1940

14 Federico Laredo Bru, Dec. 24, 1936 to Oct. 10, 1940. Vice President from May 20, 1936.

15 Fulgencio Batista, Oct. 10, 1940.

[24] United States *v.* Neely (1903), 126 Fed. Rep. 221. Cf. same case (1906), 146 Fed. Rep. 763; (1907), 154 Fed. Rep. 496; (1910), 178 Fed. Rep. 748.

[25] The United States Provisional Governors were:

William Howard Taft, Sept. 29, 1906 to Oct. 13, 1906.

Charles Edward Magoon, Oct. 13, 1906 to January 1909.

Thomas H. Barry, January 1909 to Jan. 28, 1909.

[26] *Amer. J. Int. Law*, III (1909), 431. Min. Fiscal c. Parra (1908), 40 Jurispr. del Trib. Supr. 270.

[27] *Col. Leg.*, XLV, 394, 716. *Leyes y Decr.*, XIII, 490, 536, 579. *Rev. gén. de dr. int. pub.*, XXIV (1917), docs. 229.

[28] *U. S. For. Rel.*, 1917, Supp., I, 246. *Decr. Pres.* 582. *Col. Leg.*, LVI, 209. *Leyes y Decr.*, XXI, 867.

[29] *Survey of Int. Affairs, 1927* (London, 1929), 520–522.

[30] Law (28) of July 15, 1925. *Decr. Pres.* 481. April 12, 1926; *Leyes y Decr.*, LXIV, 243. *Decr. Pres.* 1338, Aug. 23, 1926; *Leyes y Decr.*, LXVI, 417. *Decr. Pres.* 1486, Sept. 19, 1926; *Leyes y Decr.*, LXVI, 800.

through an amendment on May 9, 1928,[31] that provided for extending the term of the president to six years, to be added in his case to the four for which he had been elected. This immediately caused violent outbreaks and uprisings by all his opponents, which he endeavored to suppress by a display of growing severity, especially through an alleged gang of gunmen and thugs known as the Porristas. Terrorism spread and government grew more despotic until the United States finally withdrew its moral and financial support from the constitutional authorities. There was a revolutionary general strike in July 1933, and Machado fled to Bermuda by airplane on August 12, 1933. Fulgencio Batista, a sergeant in the Cuban army, who had been plotting against Machado for two years or more, rapidly came to the front as the strong man of the hour and won the support of United States ambassador Jefferson Caffery. He was made colonel and given command of the Cuban army following the so-called "sergeants' coup" on September 4, 1933, and had an important hand in making and unmaking six presidents. The original constitution of 1901 was declared in force again without the 1928 amendments by President Carlos Manuel de Céspedes on August 24, 1933,[32] and was abrogated on September 14, 1933,[33] by President Ramón Grau San Martín. On the advice of Ambassador Sumner Welles the United States refused recognition to President Grau, thereby probably contributing materially to his fall; and recognized immediately President Carlos Mendieta y Montefui in January 1934. A provisional constitution was signed on February 3, 1934,[34] and sworn to by President Mendieta and his cabinet on February 5, 1934, but suspended on March 8, 1935.[35] In accordance with the good-neighbor policy of President Franklin D. Roosevelt, the United States agreed to abandon the Platt Amendment, and a treaty to that end was signed at Washington on May 29, 1934.[36] A new constitutional law was adopted June 11, 1935,[37] by which Cuban women were granted the suffrage. Elections were finally held on January 10, 1936, and Miguel Mariano Gómez y Arias, son of the second president, was inaugurated as constitutional president on May 20, 1936. Some of his financial and popular land schemes went awry, he fell out with Batista, and was impeached and removed on December 24, 1936, vice president Federico Laredo Bru becoming president. Cuba declared her neutrality in the Hitler war on September 1,

[31] *Rep. Jud.* (Habana, 1928), IV, 78. 128 *British and Foreign State Papers* 681.

[32] *Decr. Pres.* 1298. *Jurispr. al Día* (Habana, 1934), Secc. de Leg. 77.

[33] *Jurispr. al Día* (Habana, 1934), Secc. de Leg. 79.

[34] *Decr. Pres.* 1684. *Jurispr. al Día* (Habana, 1933), Secc. de Leg. 283; (1934), Secc. de Leg. 81. *Bull. Pan Amer. Union* (May 1934), LXVIII, 371–374.

[35] *Jurispr. al Día* (Habana, 1935), Secc. de Leg. 105.

[36] Ratified by Cuba, June 4, 1934; ratified by United States, June 5, 1934; ratifications exchanged at Washington, June 9, 1934. 48 Stat. L. II, 1682. *U. S. Treaty Series*, No. 866. *Treaties of the U. S.* (Malloy, 1938), IV, 4054. *For. Aff.*, XII (1934), 448. 122 *British and Foreign State Papers* 278. *Current History*, XL (1934), 471, 716. *Amer. J. Int. Law*, XXVIII (1934), 530; XXVIII, Supp., 97. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXIX (1934), 326.

[37] *Jurispr. al Día* (Habana, 1935), Secc. de Leg. 489.

1939. Colonel Batista retired from the Cuban army on December 6, 1939, to run for president "for the welfare of Cuba"; he was elected at the much-postponed election of July 14, 1940, and inaugurated on October 10, 1940.

8. Mangles Islands

This group consists of Mangle Grande (Great Corn Island) at 12°10′ N latitude, 83°05′ W longitude, about two and one-half miles long by two miles wide, with an area of eight square miles, and Mangle Chico (Little Corn Island), with an area of about one square mile, seven miles to the northeast of Mangle Grande. They lie about fifty miles east northeast of Bluefields, Nicaragua, and 550 miles west northwest of Barranquilla, Colombia. These islands should not be confused with the Islas de Mangles belonging to Cuba, in the Gulf of Batabanó, north of the Isle of Pines. Colombia maintained that these two islands formed part of the San Andrés Archipelago which, with part of the Mosquito Coast, was transferred under Governor Thomas O'Neille from the captaincy-general of Guatemala to the viceroyalty of Santa Fé by the royal order of Charles IV given at San Lorenzo, November 30, 1803.[1] Colombia's dominion was more nominal than actual during the colonial regime, and these islands do not seem to have been expressly mentioned as included in the cantón of San Andrés until a decree of Governor General Mariano Montilla in March 1822 dividing the province of Cartagena into cantons.[2]

The unratified treaty of June 11, 1856,[3] between New Granada and Costa Rica provided:

> Art. 41. . . . New Granada renounces in favor of Costa Rica any right it may have to any territory west of said line, not including in this release the islands of . . . Mangle Grande, Mangle Chico . . . which shall continue to belong to New Granada;

and the rejected treaty of March 30, 1865, provided for

> Art. 2. . . . renunciation by Colombia to Costa Rica of all its rights to territory west of the said line . . . not including in this renunciation . . . Mangle Grande, Mangle Chico . . . which shall continue to belong to Colombia.

Nicaragua seems to have occupied the islands first in May 1890.[4] In the arbitration between Colombia and Costa Rica the Loubet award of September 11, 1900, declared that,

> As to the islands more distant from the Continent and included between the Mosquito Coast and the Isthmus of Panama, especially Mangle Chico, Mangle Grande . . . it is under-

[1] See Chap. I, Sec. 11, *supra*.

[2] Antonio José Uribe, *Colombia . . . Nicaragua, Las Cuestiones de Límites* (Bogotá, 1931), 351–469, 618–619.

[3] See Chap. 1, Sec. 2A, *supra*.

[4] *Anales Dipl. y Cons. de Colombia* (Bogotá, 1914), IV, 718, 797.

stood that the territory of such islands, without any exception, belongs to the United States of Colombia.

The negotiations between the United States and Nicaragua concerning an interoceanic canal, begun by the intimation of Nicaragua to United States Minister George T. Weitzel on December 15, 1912, included a grant to the United States of a naval station on Corn Island, if desired, at which Colombia protested to Nicaragua on August 9, 1913.[5] The Bryan-Chamorro Treaty, signed at Washington on August 5, 1914,[6] provided:

> Art. 2. . . . The Government of Nicaragua hereby leases for a term of 99 years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island,

with the privilege of perpetual renewal of the lease. In February 1916 the Committee on Foreign Relations of the United States Senate reported favorably on the treaty, whereupon Colombia protested to the United States, and Secretary of State Robert Lansing replied on April 11, 1916,[7] that Colombia's remonstrance against the inclusion of Great and Little Corn Islands in any engagement made by Nicaragua with the United States seemed to be a matter primarily for discussion between Colombia and Nicaragua.

In the draft for a boundary treaty presented by Nicaragua in October 1924 and rejected by Colombia, the title to the Mangles Islands was included in the questions to be settled by a mixed commission or arbitrated; and the treaty of March 24, 1928, provided:

> Art. 1. The Republic of Colombia recognizes the sovereignty and full dominion of the Republic of Nicaragua . . . over the islands Mangle Grande and Mangle Chico in the Atlantic Ocean (Great Corn Island and Little Corn Island).

Ratifications of this treaty were exchanged at Managua on May 5, 1930; and thus the question of sovereignty over these islands seems to have been permanently settled in favor of Nicaragua. In October 1936 political prisoners were sent to the islands by the Nicaraguan government of President Juan B. Sacasa.

9. Mosquito Islands

This group of low islets near 14°20′ N latitude, 82°40′ W longitude, twenty miles east of the northern end of the Mosquito Coast and fifty miles south southeast of Cape Gracias á Dios, appears since 1821 to have been under Nicaraguan

[5] *U. S. For. Rel.*, 1913, pp. 1021, 1031. *Rev. Jur.* (Bogotá, 1915), VII, 151.

[6] See Chap. I, Sec. 13, *supra*.

[7] *U. S. For. Rel.*, 1916, pp. 812, 833.

sovereignty without adverse claims from Colombia, Costa Rica, Honduras, or the United States.[1] Other islets farther south, still within twenty miles of the coast, such as Egg Rock, Tyra, King, and Pearl Cays, also belong to Nicaragua; while Albuquerque and Courtown or Eastsoutheast Cays, near 12°20′ N latitude, 81°35′ W longitude, 145 miles east of Bluefields, east of the Mangles Islands and south of San Andrés, have been considered part of the San Andrés y Providencia Archipelago and belong to Colombia.

10. Navassa Island

This island, near 18°10′ N latitude, 74°55′ W longitude, two miles long and one and a half miles wide, lies about thirty miles west of Cape Dammarie at the southwest extremity of Haiti and eighty-five miles east northeast of Morant Point at the east end of Jamaica. Peter Duncan, a United States citizen, alleged on November 18, 1857, that he discovered the island, July 1, 1857, and took possession, September 19, 1857; and Lewis Cass, United States secretary of state, on December 8, 1859,[1] issued to his assignee, Edward K. Cooper, a certificate under the Guano Acts, for the protection of United States citizens engaged in removing guano. Haiti claimed the island in 1858, but her protest was denied by Secretary of State Hamilton Fish on December 31, 1872, on the ground that Haiti had never occupied or asserted jurisdiction over the island before 1857 and at most could show only constructive possession. On September 14, 1889, there was a riot on the island among the guano laborers from Baltimore in which several persons were killed,[2] and at the request of the United States consul at Kingston, Jamaica, a British warship went to Navassa. In 1896 complaint was made by Spain that arms and men were being transhipped at the island and landed in Cuba to aid the insurgents. In 1898–1901 the receiver of the Navassa Phosphate Company, of New York, sold its rights, and the Haitians, holding that the island had been abandoned by the United States, prevented representatives of the purchasers from landing; at which the United States declared to Haiti that they had not abandoned the island. As Navase, or Navaze, the island is included in the description of territory of the republic in the Haitian constitutions[3] of 1874, 1888, 1889, and 1935; but all names of the "adjacent islands" are omitted from the United States influenced constitution of 1916. With the increasing grasp of the Caribbean, for defense of the Panama Canal, it seems unlikely that the United States will ever recognize or pay anything to quiet the claim of Haiti.

[1] Moore, *Dig. Int. Law* (Washington, 1906), I, 577.

[1] Moore, *Dig. Int. Law* (Washington, 1906), I, 266, 577. *Amer. J. Int. Law*, XII (1918), 521.

[2] Jones *v* United States (1890), 137 U. S. 202, 11 S. Ct. 80, 34 L. Ed. 691.

[3] See Chap. I, Sec. 3, *supra*.

11. Isla de Pinos

This island, known in the United States as the Isle of Pines, between 21°58′ to 21°28′15″ N latitude and 82°24′ to 83°14′ W longitude, fifty miles south of the western end of Cuba, forty-three miles long and thirty-four miles wide, has an area, including marginal swamps, of 986 square miles. The approach to Nueva Gerona, the principal town, is up a narrow inlet which permits the passage of boats drawing not more than five feet. A chain of small cays called Islas de Mangles, to the north, lies in the direct route across the shallow Gulf of Batabanó to Batabanó, nearest port on the island of Cuba and terminus of the railroad, which runs thirty-six miles north to Habana. Other low islets nearby are Cantiles Cays to the east and San Felipe Cays to the northwest. The island was discovered by Columbus on his second voyage on St. John's day, June 24, 1494, when he ascended the Casas River as far as the present site of Nueva Gerona and named the island Evangelista, to replace the Indian name of Caramaraco. In 1575 Spaniards from Habana established cattle ranches, and in 1596 the new settlement was attacked by Sir Francis Drake. In 1630 the island was granted by Philip IV to Captain Hernando Pedroso; it later passed from him to Nicolás Duarte. It became a refuge for runaway slaves, smugglers, and freebooters, including Captain Henry Morgan and the Dutch pirate, Cornelius Jols. In 1826 Captain-General Dionisio Vives of Cuba established a colony which he called La Colonia de la Reina Amalia, in honor of the third wife and queen of Ferdinand VII.

During the Spanish regime the island had always been considered and administered as part of the department of Habana, in the province of Cuba, under the governors and captains-general at Habana, and in 1880 it was specifically included in the judicial district of Bejucal. United States citizens and land companies began to acquire property on the island very soon after the Spanish-American War, and their influence at Washington proved to be such that there was included as Article 6 of the Platt Amendment [1] a provision that the question of title to the island should be the subject of further negotiations between Cuba and the United States. A treaty of July 11, 1903, by which the United States recognized Cuba's title to the island, failed to obtain the approval of the United States Senate before the time specified in the treaty for its ratification; and a new treaty to the same effect but without limiting the ratification time was signed on March 2, 1904.[2] Meantime the landowners had been representing to prospec-

[1] See Sec. 7, this chap., *supra*.

[2] Ratifications exchanged, March 23, 1925. Hay-Quesada Treaty; 44 Stat. L. III, 1997. *U. S. Treaty Series*, No. 709. *Treaties of the U. S.* (Malloy, 1938), IV, 4036. *League of Nations Treaty Series*, CXXVII, 144. 122 *British and Foreign State Papers* 278. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XIV (1926), 3. *Amer. J. Int. Law*, XVII (1923), 100; XIX (1925), Supp., 95. *Rev. de Der. Int.* (Habana, 1923), III, 42; (1925), VIII, 55, 64.

tive buyers that the island was sure to remain, like Puerto Rico, under the United States flag; and they succeeded in inducing the United States Senate to refuse approval of the new treaty, despite the opinions of Secretary of State Elihu Root in 1905 [3] and the United States Supreme Court in 1907.[4] About 95 per cent of the land on the island was owned or controlled by some four hundred United States citizens and companies. The United States Senate on March 13, 1925,[5] after twenty-one years' consideration, approved the 1904 treaty; and a chorus of bitter complaint and cries of "betrayal" arose from the islanders and the absentee landlords in the United States when the return of the island to Cuba became certain. Since then the ranches and fruit-orchards have gradually passed out of the hands of the discouraged United States citizens; and in 1926 Cuba erected a model penitentiary on the island.[6]

12. Revillagigedo Islands

This group of isolated, uninhabited rocky islands in the Pacific Ocean at 18° N latitude, 112° W longitude, with a total area of 320 square miles, lies 420 miles west southwest from Cape Corrientes, state of Jalisco, Mexico. The largest is Socorro (San Tomás), twenty-four miles long and nine miles wide; and others, widely separated, are Clarión, farthest west, Roca Partida and San Benito. The group was named for Francisco de Güémes y Horcasitas, first count of Revillagigedo, forty-first viceroy of New Spain, from July 9, 1746, to November 10, 1755, or perhaps also for his eldest son, born in Habana, Juan Vicente de Güémes Pacheco y Padilla, second count of Revillagigedo, the fifty-second viceroy of New Spain, from October 16, 1789, to July 8, 1794. The Mexican national government on June 28, 1856,[1] offered the islands for private lease for nine years; and on July 25, 1861,[2] granted their use to the state of Colima at the request of its legislature for penal colonies, but to return to the federal government if such colonies were not established within three years or were subsequently abandoned.

[3] Letter of Nov. 27, 1905, by Elihu Root to Charles Raynard, president of the American Club of the Isle of Pines: "The island . . . is not and never has been territory of the United States. This is the view with which President Roosevelt authorized the pending treaty." S. Doc. 205, V, Ser. 4913, 59th Cong., 1st Sess. (Washington, Feb. 1, 1906), 11. Fernando Ortiz, "Cuba's Title to the Isle of Pines," *Cuba Review*, XXIII (Dec. 1924), 14. *U. S. For. Rel.*, 1910, p. 415; 1911, p. 135; 1913, p. 354.

[4] The Isle of Pines is at least *de facto* Cuban territory, as the United States has never taken possession of it. Pearcy *v.* Stranahan (1907), 205 U. S. 257, 27 S. Ct. 545, 51 L. Ed. 793. *Amer. J. Int. Law*, I (1907), 784; V (1911), 82.

[5] The vote was 63 to 14. *For. Aff.*, III (1925), 689; VI (1928), 235; VIII (1930), 371, 377. *Amer. J. Int. Law*, XIX (1925), 340. *Rev. de Der. Int.* (Habana, 1925), VIII, 55; (1928), XIII, 274. 122 *British and Foreign State Papers* 279. *Survey of Int. Affairs, 1925* (London, 1928), II, 434–436.

[6] Decr. Pres. 1506, July 10, 1925. *Leyes y Decr.*, LX, 262. Decr. Pres. 1996, Sept. 15, 1925. *Leyes y Decr.*, LXI, 318.

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[1] *Leg. Mejicana de enero a junio de 1856* (Navarro, 1856), 583

[2] *Archivo Mexicano* (Mexico City, 1862), VI, 321.

13. Serrana Bank

This is a low bank near 14°45′ N latitude, 80°15′ W longitude, with Southwest Cay, about 200 miles east southeast of Cape Gracias á Dios and 440 miles northwest of Barranquilla, Colombia. One hundred and fifteen miles to the north northeast at 15°20′ N latitude, 79°40′ W longitude, is the Serranilla Bank group, including Alice Shoal, Bajá Nuevo, Beacon Cay, East Cay, Middle Cay, West Breaker, and Rosalind Bank. With Quitasueño Bank, seventy miles to the west, and Roncádor Cay, fifty miles to the south, Serrana Bank is claimed by Colombia always to have been part of San Andrés y Providencia Archipelago.[1] On claim of James W. Jennett in August 1868 despite a protest by the minister of Honduras, the United States issued a certificate to Jennett for "Serrano and adjacent cays" under the Guano acts on December 11, 1868.[2] The treaty of March 24, 1928,[3] between Colombia and Nicaragua provided:

> Art. 1. . . . There shall not be considered included in this Treaty Roncádor, Quitasueño and Serrana cays, the ownership of which is in dispute between Colombia and the United States of America.

Notes exchanged between Colombia and the United States in Washington, April 10, 1928,[4] as to the status of Serrana and Quitasueño banks and Roncádor Cay declared that:

> Whereas the interest of the United States lies primarily in the maintenance of aids to navigation; and whereas Colombia shares the desire that such aids shall be maintained without interruption and furthermore is especially interested that her nationals shall uninterruptedly possess the opportunity of fishing in the waters adjacent to those Islands, the *status quo* in respect to the matter shall be maintained and the Government of Colombia will refrain from objecting to the maintenance by the United States of the services which it has established or may establish for aids to navigation, and the Government of the United States will refrain from objecting to the utilization, by Colombian nationals, of the waters appurtenant to the Islands for the purpose of fishing.

Honduras again protested to Colombia and to the United States, but they both refused to recognize that she had any rights in the three islands.

14. Swan Islands

These islands (Islas de Cisne), 170 miles northeast of Trujillo, Honduras, in 17°25′ N latitude, 83°55′ W longitude, consist of Great Swan, the western island, two miles long and one-half mile wide, and Little Swan, the eastern island, one

[1] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 266, 267.

[2] Moore, *Dig. Int. Law* (Washington, 1906), I, 579.

[3] See Chap. I, Sec. 11, *supra*.

[4] *U. S. Treaty Series*, No. 760½. *Treaties of the U. S.* (Malloy, 1938), IV, 4023. *Amer. J. Int. Law*, XXVII (1929), 155.

and a half miles long and one-half mile wide. Honduras declares that these islands are those which were in 1574 known by the name of San Millán, and subsequently appeared on maps as McMillan, Santillán, Santa Anita, and Santanilla. Joaquín del Castillo, a pilot of Omoa, reported to the captain-general of Guatemala on July 6, 1766, that,

> Santanilla is placed on all the maps 60 leagues due east of Guanajas, but this is not so for Santanilla is 38 leagues east northeast from the Guanajas; said island has 4 fathoms off its south shore, and can shelter any vessel, being half a port.

The islands were uninhabited during the Spanish regime, but Honduras considers that they were included in the territories returned under the treaties of 1783 and 1786 by England to Spain, to whose rights Honduras succeeded on independence. In 1863 the United States extended its protection for the islands under the guano acts to the New York Guano Company,[1] as whose assignee the Pacific Guano Company made claim in 1894. The islands appear to have been abandoned at times after 1863, and Great Britain made various landings. The United Fruit Company, apparently with the knowledge of both the United States and Great Britain, in 1907 built a radio station on Great Swan and maintained it until December 1927, when the advent of short wave radio made unnecessary relay stations between the United States and the tropics. Early Honduran governments are said to have granted on the islands various guano, phosphate, and fishing rights which eventually lapsed; and the government of President Rafael López Gutiérrez in May 1921 directed the governor of the Bay Islands to proceed to the Swan Islands and take possession in the name of Honduras. Willing Spencer, the United States chargé d'affaires at Tegucigalpa, inquired on May 27, 1921, "What idea of right does the Government of Honduras entertain for this action?" to which Foreign Minister Alberto Uclés replied on May 28 that the islands formed part of the territory of the Republic of Honduras. The expedition did not go, and in August 1921 the president directed the governor of the department of Atlantida to make the trip. Spencer on August 11, 1921, notified Minister Uclés that the United States claimed the islands, and suggested that Honduras refrain from any attempt to take possession and maintain for the present the *status quo*.[2] Honduras suspended the sailing of the expedition, and the matter thereupon lapsed and has since rested, though the United States State Department announced on August 18, 1922, that Honduras desired that the negotiations as to ownership should be speeded up. The United States Navy Department

[1] 34 *Ops. U. S. Atty. Gen.* 515. Moore, *Dig. Int. Law* (Washington, 1906), I, 579. 46 *British and Foreign State Papers* 805.

[2] *Mem. de Rels. Ext., 1920–21* (Tegucigalpa, 1922), 21, 199–209.

on a map in 1927 [3] showed the islands as belonging to the United States, without protest from anyone; but in December 1934 when the National Geographic Society on its map of Mexico, Central America, and the West Indies [4] showed the islands as United States territory, Honduras protested anew to the United States State Department. A light on one of the towers constructed in 1907 by the United Fruit Company is still in operation, attended by a caretaker.

15. British West Indies

A. Bahamas

The Bahamas are an archipelago of twenty-nine islands (besides 661 cays and 2,387 rocks), running southeastward from sixty miles east of Florida about 630 miles toward Santo Domingo, and lying between 26°40′ to 22°25′ N latitude and 72°50′ to 80°50′ W longitude. The main islands, with a land area of 4,404 square miles (5,450 square miles for the whole group), are the Little and Great Abaco, Andros group, Great Bahama, Bimini, Cat, Crooked, Eleuthera (from Isla de Tierra?), Exuma chain, Great Inagua (45 miles long, 18 miles wide), Little Inagua, Long, Mayaguana, New Providence (with Nassau, the capital and largest city), Rum Cay, and San Salvador or Watling Island.[1] The last, known to the Indians as Guanahani, was probably Columbus' first landfall, on October 12, 1492, and was named by him San Salvador, but he left no settlement on it. Crooked and Long Islands and Rum Cay were seen by Columbus on the same voyage and named by him respectively Isabella, Fernandina, and Santa María de la Concepción. He called the native Arawak Indians Lucayana. Turks and Caicos Islands, a little farther east, are geographically part of the Bahama group, and were put under the Bahama government in 1804, but were transferred to Jamaica, August 11, 1848.

In 1627 the Bahamas were included in a grant by Charles I of England to Sir Robert Heath; and the Company of Eleutherian Adventurers formed in London in 1647–49 settled Eleuthera and New Providence Islands. Charles II in 1670 granted the Bahamas to the Duke of Albemarle and five other proprietors of Carolina, and John Wentworth was made governor for them in 1671. There were constant depredations by Spanish and French mariners, the two powers joining in 1703–04 to expel most of the settlers from the recently founded town of Nassau. The islands became a pirates' resort, and the proprietors surrendered

[3] U. S. Navy Dept., *Central America and Mexico Pilot* (East Coast), 3d ed. 1927, p. 245.

[4] *Nat. Geog. Mag.*, LXVI (1934), 738; reissued, LXXVI (1939), 739.

[1] Lighthouses, 1931. 134 *British and Foreign State Papers* 171.

the government to the king in 1717. The young American navy captured New Providence in 1770 but soon abandoned it; and in 1788 trade with the United States was forbidden.[2] New Providence was taken by Spain in 1781 but recaptured by the British in 1783, after the restoration to Great Britain of all the Bahamas had been provided for in the Treaty of Versailles, September 3, 1783.[3]

Slavery was abolished in the islands in 1838, with compensation to the owners. In 1859 Verde Cay was claimed by Great Britain as a part of the Bahama group.[4] The Bahamas became an important center of blockade-running during the American Civil War, 1861–65.[4a] During prohibition in the United States, from 1920 to 1933, the islands enjoyed great prosperity as a result of the rum-running trade. On August 20, 1937, rioting and disorders among the negroes on Great Inagua Island compelled nine British and five United States subjects to flee with a large number of rifles and cartridges in a small motor launch to Cuba, where they were arrested for unlawful landing of arms, but acquitted after a speedy trial. Two brothers were in November 1937 sentenced to be hanged for fomenting the rioting, in which one native was killed. An air and naval base in the Bahamas was one of the eight sites to be leased to the United States for ninety-nine years under the agreement with Great Britain announced on August 20, 1940, subsequently fixed at Abraham Bay and a small area on Mayaguana Island. The Bahamas are now administered [5] by a governor (the Duke of Windsor since August 1940) with an Executive Council of eight, a Legislative Council of nine, and a Representative Assembly of twenty-nine members.

B. Barbados

Barbados lies east of the Windward Islands, in 13°04′ N latitude, 59°37′ W longitude, and is 21 miles long and 14½ miles wide, with a total area of 166 square miles. On it have been found more numerous traces of the Carib Indians than on any other island of the Antilles. It was probably first sighted by the Portuguese, but in 1605 the British ship *Olive Blossom* took possession of it for James I. It was granted by James I in 1625 to Baron Ley, who started a settlement; but the island was claimed by James Hay, first Earl of Carlisle, under a grant to him of all the British Caribbean islands by Charles I on July 2, 1627, in fulfillment of a promise made by James I in 1624, and he started a colony at Carlisle Bay, the only natural harbor, with sixty-four settlers in 1627. The Earl

[2] 3 *British and Foreign State Papers* 552. Cf. (1818), 5 *British and Foreign State Papers* 735, 999.

[3] Articles 7, 10. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 484. *Trats. de España* (Cantillo, Madrid, 1843), 586, 588.

[4] Op. of Jeremiah S. Black, U. S. Attorney General, Dec. 14, 1859. *Ops. Atty. Gen.* (Washington, 1866), IX, 406.

[4a] The Adela (1867), 73 U. S. (6 Wall.) 266, 18 L. Ed. 821.

[5] Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1899), I N.S., 296.

of Carlisle on February 26, 1647, leased the islands for twenty-one years to Francis Lord Willoughby of Parham, and he was appointed governor by Charles I in 1648. For a time Willoughby led refugee Royalists in resistance to the Parliamentary forces, but he finally surrendered to Sir George Ayscue on January 11, 1652, and was exiled from the islands. After the Restoration the proprietary or patent interest was abolished, and the crown took over the government. The island beat off an attack by De Ruyter in April 1665. Willoughby was governor again from 1663 until his death in 1666, being succeeded as governor by his brother, William Willoughby, from 1667 to 1673. In 1805 Admiral Cochrane arrived just in time to save the island from falling into the hands of the French. Barbados was acquired without conquest, has never since been out of British possession, and has not been threatened since 1805. It is administered [6] by a governor with an executive council, executive committee, legislative council of nine appointed by the crown, and house of assembly of twenty-four members.

C. Bermudas

This group of twenty inhabited and about 340 uninhabited small islands,[7] known also for a time as the Somers Islands, lies in 32°15′ N latitude, 64°50′ W longitude, 580 miles east by south from Cape Hatteras, North Carolina, about 600 miles southeast from False Cape, Virginia, and 677 miles from New York. The group extends about twenty-two miles from northeast to southwest, and has a land area of twenty square miles. The largest, Great Bermuda or Main Island, with Hamilton, the capital, is fourteen miles long by one mile wide; and others are Boaz, Cooper, Ireland, Nonsuch, Paget, St. David, St. George, Smith, Somerset, and Watford.

The islands were discovered before 1515 by Juan de Bermudez, a Spaniard, who was shipwrecked there with a cargo of pigs on a voyage from Spain to Cuba. Henry May, an Englishman, was wrecked there in 1593; and in 1609, Sir George Somers, who made the first attempt at settlement. In 1684 the crown took over the government from a company previously formed for the "Plantation of the Somers." The group fell within the description[8] of "all islands within 300 leagues of the coast already granted, between 41° and 30° N latitude" in the third charter[9] for Virginia granted by James I on March 12, 1611/12, to the London Company; but in 1612 they were specially granted to an offshoot of the Virginia Company, of one hundred and twenty proprietors, of whom sixty under Henry

[6] Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1900), II N.S., 102.

[7] Map. *Nat. Geog. Mag.* (1922), XLI, 2.

[8] Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 472.

[9] Hening's (Va.) Stats. (1823), I, 98, 100.

More went out at once to settle the islands. Main Island was divided according to instructions from London into eight "tribes," for the principal families, and the names persist in the parishes on the island today. An air and naval base in the Bermudas was one of the eight sites to be leased to the United States for ninety-nine years under the agreement with Great Britain announced on August 20, 1940, subsequently fixed at Long Bird Island, part of St. David's Island, the small islands between St. David's and Hamilton islands, Castle Harbor and perhaps an island in the Great Sound. On August 24 the Governor told the Colonial Assembly that the base would be in Great Sound. The colony is administered [10] by a governor, with an executive council of seven members appointed by the crown, a legislative council of nine members also appointed by the crown, and an elected house assembly of thirty-six members.

D. Jamaica

This island, the largest of the British West Indies, with an area of 4,450 square miles, lies between 18°32′ to 17°43′ N latitude and 76°10′ to 78°20′ W longitude, about 80 miles south of the eastern end of Cuba, 125 miles west of Haiti across the Jamaica Channel, and 600 miles east of British Honduras. It was discovered by Columbus on his second voyage, on May 3, 1494; and he was stranded for twelve months on its north coast in 1503–04. The Arawak Indians called the island Xaymaca, or the Isle of Springs; and the Spanish, Sant' Jago. Diego Columbus appointed Juan de Esquivel governor in 1509, and the island was divided among eight noble Spanish families. Villa de la Vega (later Spanish Town), founded in 1523, was the capital until 1872. Admiral Sir Anthony Shirley plundered and burnt the town in 1596, and it was raided by Colonel Jackson in 1635. Admiral William Penn and General Robert Venables, sent out by Oliver Cromwell, took the island on May 11, 1655, and held it for the British. Cromwell issued a proclamation on October 10, 1655, to encourage emigration to Jamaica and settlement, and the Spaniards were completely expelled in 1658. It was governed by military authority until 1661, but thereafter became a chief resort of buccaneers. The title of Great Britain to the island was recognized by the Treaty of Madrid, July 18, 1670; [11] and on the transfer of the Asiento Spanish slave monopoly from France to Great Britain by the Treaty of Madrid, March 26, 1713,[12] to run for thirty years from May 1, 1713 (but ended in 1739), Jamaica became one of the greatest slave markets of the world. From

[10] Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1897), II, 261.

[11] Article 7. *Col. de los Trats. de . . . Carlos II* (Madrid, 1751), I, 498.

[12] *Trats. de España* (Cantillo, Madrid, 1843), 58.

1700 to 1786 more than 610,000 negroes were brought from Africa to Jamaica and sold there. A threatened invasion by the French under Comte de Grasse was averted by the victory of Admirals George Brydges Rodney and Sir Samuel Hood to the leeward of Dominica, April 12, 1782. Escaped slaves, called Maroons, in the mountains, kept up constant fighting until the end of the eighteenth century in an endeavor to preserve their freedom. The last attempted invasion by the French was repulsed by Admiral Sir John Thomas Duckworth in a victory off San Domingo, February 6, 1806. In 1807 the slave trade was abolished, and on August 7, 1833, the British Abolition Act was passed, freeing 125,590 slaves, with compensation to the planter owners at £19 per slave. In 1831 and at Morant Bay on October 11, 1865, there were serious negro revolts.

Turks and Caicos islands, geographically and, from 1768, politically a part of the Bahamas, have been attached for administration to Jamaica since August 11, 1848.[13] The Caicos group, of which only eight are inhabited, consists of Ambergris Cay, Grand, North, East, South, and West Caicos, Providentiales, and twenty or more small cays, with a total area of 165.5 square miles. The largest, Grand Caicos, near 21°45′ N latitude, 71°30′ W longitude, is twenty-five miles long by twelve miles wide. East Caicos, nine miles long, with Flamingo Hill (270 feet high) was visited in 1512 by Ponce de León. After the American Revolution a number of Tories from Georgia obtained grants in the islands and, migrating with their slaves, attempted to raise cotton, but gradually abandoned the colony. From 1882 to 1920 sisal was cultivated extensively; but of late years the population of 3,500, mostly of African descent, have been engaged chiefly in the production of salt, sponges, and shells. In 1939 a party of twenty-five persons from Pasadena, California, went to settle on East Caicos. Turks Islands are a group of nine low islets twenty-five miles southeast of East Caicos; Grand Turk, the largest, has an area of ten square miles, and Salt Cay of five and a half square miles. They were uninhabited in 1678 when Bermudans began to dig salt from them. In 1710 the Spanish expelled the British, but in 1768 the Bahamas government made good its claim to the islands. They are now administered by a commissioner with a legislative council of seven members, all appointed by the crown. From 1862 to 1884 British Honduras [14] was administered by a lieutenant-governor under the governor of Jamaica. Morant Cays,[15] three small islands between 17°27′ to 17°23′ N latitude and 75°54′ to 75°57′ W longitude, thirty-three miles southeast of Morant Point, were first taken possession of by Commander William John Ward in the steam sloop *Styx* for Great Britain on October 12, 1862; and

[13] 36 Vict., c. 6, April 4, 1873. 63 *British and Foreign State Papers* 390; 65 *ibid.* 1229.

[14] See Chap. I, Sec. 7, *supra*.

[15] 63 *British and Foreign State Papers* 797. Moore, *Dig. Int. Law* (Washington, 1906), I, 577.

Pedro Cays,[16] four islets forty-five miles south-southwest of Portland Point, known as Northeast, Middle, Southwest, and South Cays, in 1863. In June 1864 the governor of Jamaica by letters patent was authorized to grant licenses to take guano from these islands. On March 3, 1882, they were annexed to Jamaica,[17] whereupon claims by the United States on behalf of James W. Jennett alleging discovery and possession in 1866 appear to have been abandoned. The Cayman Islands [18] are also a dependency of Jamaica.

On January 14, 1907, a violent earthquake shook Jamaica and seriously damaged Kingston, the capital — since, however, greatly improved by reconstruction under new building laws. On January 17, 1907, Rear Admiral Charles H. Davis on the U.S. warship *Missouri*, with the *Indiana* and the torpedo boat destroyer *Whipple*, arrived with assistance, but owing to a misunderstanding with Governor Sir J. Alexander Swettenham over the landing of United States marines to quell a mutiny at the general penitentiary and two hundred men to help clear the streets, withdrew on January 19, 1907.[19] An air and naval base in Jamaica was one of the eight sites to be leased to the United States for ninety-nine years under the agreement with Great Britain announced on August 20, 1940, subsequently fixed at an anchorage in Portland Bight, Goat Island and adjacent bays of approximately thirty-three square miles in and east of Galleon Harbor, an area on Portland Bight and Portland Island, approximately one hundred acres near Williams Field Station and an area of about one square mile about five miles south of Maypen along Bakers Canal. Jamaica is divided into the three counties of Surrey, Middlesex, and Cornwall, and into fourteen towns, and is administered [20] by a governor-in-chief with a privy council and a legislative council of five ex-officio, ten nominated, and fourteen elected members. By the census of 1921 it had a population of 14,476 whites and 817,643 black or colored [21] and an estimated total at the end of 1936 of 1,138,558 persons.

E. Leeward Islands

This group of islands, extending in a curve southeast from Puerto Rico to Guadeloupe, is divided into five presidencies: (1) Antigua, Barbuda, and Redonda; (2) St. Kitts, Nevis, and Anguilla; (3) Dominica; (4) Montserrat; and (5) the (British) Virgin Islands and Sombrero. They are administered [22] by a governor with an executive council nominated by the crown and a legislative

[16] Moore, *Dig. Int. Law* (Washington, 1906), I, 578.
[17] 73 *British and Foreign State Papers* 531.
[18] See Sec. 3, this chap., *supra*.
[19] *U. S. For. Rel.*, 1907, I, 558–569. Act of Jan. 18, 1907, c. 154. 34 Stat. L. I, 850.
[20] Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1897), I, 161.
[21] Obeah in Jamaica. *J. Soc. Comp. Leg.* (London, 1903), V N.S., 262.
[22] Federation. 34/35 Vict., c. 107, Aug. 21, 1871. 61 *British and Foreign State Papers* 1349; 87 *ibid.* 1030. Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1900), II N.S., 110.

council of ten official and nine selected unofficial members. A royal commission in 1933 recommended that the Leeward and the Windward islands should be united into one colony under a governor with headquarters at St. Lucia.

(*a*) *Anguilla*

This island, also called Snake Island, at 18°12′ N latitude, 63°05′ W longitude, sixty miles northwest of St. Kitts, is sixteen miles long, with an area of thirty-five square miles. Inhabited largely by negroes, it has been almost entirely denuded by charcoal burners, and suffers from lack of fresh water.

(*b*) *Antigua*

This island, at 17°06′ N latitude, 61°45′ W longitude, fifty miles east of St. Kitts, is fifty-four miles in circumference and has an area of 108 square miles. It has English, St. John, and other good harbors, and is the residence of the governor of the Leeward Islands. It was discovered by Columbus on his second voyage in 1493, and named by him for the church of Santa María la Antigua in Seville. It was uninhabited by Europeans until 1632, when English settlers took possession; and there was further settlement under Francis Lord Willoughby of Parham whom Charles I appointed governor in 1663. It was raided by the French in 1666 but soon reconquered by the British and formally restored to them by the Treaty of Breda, July 21, 1667.[23] An air and naval base on Antigua was one of the eight sites to be leased to the United States for ninety-nine years under the agreement with Great Britain announced on August 20, 1940, subsequently fixed at an area about two and three-quarters by one mile on Parham Sound and Crab's Peninsula on the east side of Parham harbor.

(*c*) *Barbuda*

This island, at 17°33′ N latitude, 61°43′ W longitude, with an area of sixty-two square miles, lies twenty-five miles northwest of Antigua, of which it is a dependency. In 1628 it was annexed by Great Britain, and in 1680 granted to the Codrington family, who held it for over two hundred years. It is now government property.

(*d*) *Dominica*

This island, at 15°30′ N latitude, 61°20′ W longitude, lies about twenty-five miles from Guadaloupe on the north and Martinique on the south. It is twenty-nine miles long and sixteen miles wide, with an area of 291 square miles, and is

[23] Articles 12, 13. Knapton, *Gen. Coll. of Treaties* (2d ed., London, 1732), I, 127.

the largest of the Leeward group, inhabited by a few Caribs and a peasantry speaking a French patois. It was discovered by Columbus on Sunday, November 3, 1493, on his second voyage, and named by him Domingo, in honor of the day. In 1632 French came as the first European settlers. In 1660 a treaty appears to have been made between the French, British, and natives, making Dominica and St. Vincent neutral and assigning them to the Caribs; and in 1748 it was again agreed that Dominica should be left in the undisturbed possession of the natives. The French settlers increased, however, and the island came under a French governor. In the wars from 1761 onwards it was frequently captured by the British and retaken by the French; it was restored to Great Britain by the Treaty of Paris, February 10, 1763,[24] again taken by the French, and again restored to Great Britain by the Treaty of Versailles, September 3, 1783.[25]

In 1805 the French general La Grange with four thousand troops took Roseau, the capital, and pillaged the island. France was unable to keep it, and the island has since been undisturbed in British possession, from 1872 a part of the colony of Leeward Islands.

(*e*) *Montserrat*

This island, at 16°45′ N latitude, 62°07′ W longitude, lies twenty-seven miles southwest of Antigua. It is eleven miles long and seven miles broad, with an area of thirty-two and a half square miles. It was discovered in 1493 by Columbus on his second voyage, and named after Monserrado, a mountain in Spain. In 1632 it was colonized by the British under Sir Thomas Warner. Charles I appointed Francis Lord Willoughby of Parham governor in 1663. It was taken by the French in 1664, restored to the British in 1668, captured again by the French in 1782, and finally restored to the British by the Treaty of Versailles, September 3, 1783.[26]

(*f*) *Nevis*

This island, at 17°14′ N latitude, 62°33′ W longitude, has an area of fifty square miles and is separated from St. Kitts by a shallow channel, two miles wide at its narrowest point. The island was discovered in 1498 by Columbus on his third voyage and in 1628 was colonized by English settlers from St. Kitts. Charles I appointed Francis Lord Willoughby of Parham governor in 1663. It was captured by the French and restored to Great Britain by the Treaty of Versailles, September 3, 1783.[27]

[24] Article 9. Martens, *Rec. de Tr.*, I (1817), 104, 112.

[25] Article 8. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 462. Martens, *Rec. de Tr.*, III (1818), 519.

[26] Article 8. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 462. Martens, *Rec. de Tr.*, III (1818), 519.

[27] Article 8. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 462. Martens, *Rec. de Tr.*, III (1818), 519.

(*g*) *Redonda*

This island, at 25°06′ N latitude, 61°35′ W longitude, is twenty-five miles southwest of Antigua, of which it is a dependency, and has an area of half a square mile.

(*h*) *St. Kitts*

This island, called also St. Christopher, at 17°27′ N latitude, 62°37′ W longitude, is twenty-three miles long and has an area of sixty-three square miles. It was discovered in 1493 by Columbus on his second voyage, and first settled in 1623 by the English under Sir Thomas Warner. In 1628 it was divided between the British and French. Charles I appointed Francis Lord Willoughby of Parham governor in 1663. The island fell to the French in April 1666, but by the Treaty of Utrecht, April 11, 1713,[28] it was yielded entirely to the British crown. It was captured by the French, and restored to Great Britain by the Treaty of Versailles, September 3, 1783.[29]

(*i*) *Virgin Islands*

The entire group called Virgin Islands consists of about one hundred islands, mostly uninhabited, lying between 18°50′ to 17° N latitude and 64°10′ to 65°30′ W longitude, east of Puerto Rico, with a total area of 465 square miles. Culebra or Passage and Viéques or Crab Islands were acquired from Spain [30] with Puerto Rico by the United States in 1898,[31] and St. Croix, St. John, and St. Thomas were purchased from Denmark by the United States in 1917.[32]

The British islands are thirty-two in all, with an area of fifty-eight square miles, the principal being Anegada, Beef, Cooper, Dog, Ginger, Guano, Jost Van Dyke, Norman, Peter, Salt, Tortola, and Virgin Gorda. The group was discovered by Columbus on his second voyage, in 1493, and named by him Las Vírgenes, in honor of St. Ursula and her companions. In 1666 the British occupied Tortola and have held it continuously since. The islands were a favorite resort of buccaneers in the seventeenth century. With Sombrero Island, at 18°36′ N latitude, 63°28′ W longitude, they are now governed by a commissioner under the governor of the Leeward Islands.

F. Tobago

This island, at 11°15′ N latitude, 60°40′ W longitude, lies twenty-one miles northeast of Trinidad. It is twenty-six miles long and seven and a half miles wide, with an area of 116 square miles and is divided into seven parishes. It was

[28] Article 12. De Clercq, *Rec. de Tr. de la France* (Paris, 1880), I, 6.

[29] Article 8. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 462. Martens, *Rec. de Tr.*, III (1818), 519.

[30] 56 *British and Foreign State Papers* 1184.

[31] See Sec. 18A, this chap., *infra*.

[32] See Sec. 18B, this chap., *infra*.

probably discovered by Columbus in 1498 on his third voyage, and named Asunción; later it was called Tobaco, then corrupted to Tobago. In 1580 the British first took possession; but the island passed to the Dutch and was recaptured from them by William Lord Willoughby of Parham in December 1672. It was later captured by the French, formally restored to Great Britain by the Treaty of Paris, February 10, 1763,[33] again captured by the French, retaken by the British, restored to the French by the Treaty of Versailles, September 3, 1783,[34] and again taken by the British. The British title was finally confirmed by the express exception of Tobago from the former possessions to be returned to France by the Treaty of Paris, May 30, 1814.[35] It was administered at first with St. Vincent,[36] but in 1887 [37] it was joined to Trinidad,[38] of which it has since 1899 been one of the wards under a warden. An air and naval base on Trinidad was one of the eight sites to be leased to the United States for ninety-nine years under the agreement with Great Britain announced on August 20, 1940.

G. Windward Islands

In 1775 under Spain the Windward Islands were attached for fiscal purposes to the intendency of Habana. Except for the common governor, the administration under the British is separate for each of the three large islands of Grenada, St. Lucia, and St. Vincent.

(*a*) *Grenada*

This island, southernmost of the Windward Islands, between 12°15′ to 11°58′ N latitude and 61°35′ to 61°50′ W longitude, is 140 miles west of Barbados and 85 miles north of Trinidad and the Venezuelan coast. It is twenty-one miles long and twelve miles wide, with an area of 133 square miles. It was discovered by Columbus in 1498 on his third voyage and named by him Concepción. In 1627 it was granted to the British, but in 1650 it was purchased by the French governor du Parquet of Martinique. The French were well received by the Caribs, and proceeded with great cruelty to exterminate them. The island was transferred in 1665 to the French West India Company, and on the dissolution of that company in 1674 was taken over by the French crown. In February 1762 it capitulated to British forces under Major General Robert Monckton, and with the Grenadines was formally ceded by the French to the British by the Treaty of

[33] Article 9. Martens, *Rec. de Tr.*, I (1817), 104, 112.

[34] Article 7. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 462. Martens, *Rec. de Tr.*, III (1818), 519.

[35] Article 8. Martens, *Nouv. Rec. de Tr.*, II (1818), 1.

[36] 39/40 Vict., c. 47. 67 *British and Foreign State Papers* 706.

[37] 50/51 Vict., c. 44. Order in Council, Nov. 17, 1888, 78 *British and Foreign State Papers* 828. Modes of Legislation. *J. Soc. Comp Leg.* (London, 1897), II, 291.

[38] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 271.

Paris, February 10, 1763.[39] In 1779 the French under Count d'Estaing recaptured it, but with the Grenadines it was restored to Great Britain by the Treaty of Versailles, September 3, 1783.[40] In 1795 a rebellion against the British was instigated and assisted by the French, but the island was subdued by troops under Sir Ralph Abercromby in 1796.[41] The slaves were emancipated in 1837. The island, with Carriacou and the southern half of the Grenadines, is administered [42] by the governor with a legislative council of three other ex-officio, four nominated, and seven elected members.

(*b*) *The Grenadines*

These are a chain of about six hundred islets extending sixty miles from northeast to southwest from St. Vincent to Grenada, between which administration is divided. The largest of the northern group, under St. Vincent, is Bequia, with an area of six square miles; and the largest of the southern group, under Grenada, is Carriacou, seven miles long and two miles wide with an area of thirteen square miles. The negro population works small lots on the *métayage* (crop-sharing) system.

(*c*) *St. Lucia*

This island, northernmost of the group, at 14° N latitude, 61° W longitude, lies twenty miles south of Martinique across the St. Lucia Channel and twenty-one miles northeast of St. Vincent. It is forty-two miles long and twelve miles wide, the largest of the Windward group, with an area of 238 square miles and a coast line of 150 miles. It was probably discovered in 1502 by Columbus on his fourth voyage and named by him for the saint on whose day it was sighted. It may have been the island called by the Caribs Mantinino or Martinino, although that is now more generally thought to have been Martinique. The Dutch are supposed to have built a fort on it very early. In 1605 the first attempt at settlement was made by Englishmen, most of whom were killed by the Caribs. For over two hundred years the island was fiercely fought for by the British and French and frequently granted by the kings of both countries.

In 1638 another attempt at settlement by the English ended disastrously, from sickness and native hostility; and colonists were thereafter deterred by the island's unlucky reputation until in 1650 French settlers from Martinique succeeded in establishing themselves. In 1660 the French made a treaty with the Caribs, but the English took the island soon after and held it until it was restored

[39] Article 9. Martens, *Rec. de Tr.*, I (1817), 104, 112.

[40] Article 8. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 462. Martens, *Rec. de Tr.*, III (1818), 519.

[41] Commander-in-chief of the British forces in the West Indies, 1795–97.

[42] Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1897), I, 151. 67 *British and Foreign State Papers* 706.

to the French by the Treaty of Breda, July 21, 1667.[43] An attempted settlement under a British grant of 1722 was frustrated by the French; and by the Treaty of Aix-la-Chapelle, July 8, 1748,[44] the previous neutral status was restored. In February 1762 it was captured by Admiral George Brydges Rodney and Major General Robert Monckton, but was given back to France by the Treaty of Paris, February 10, 1763,[45] retaken by the British, and again given back to the French by the Treaty of Versailles, September 3, 1783.[46] Possession changed four times more between France and Great Britain, until in 1803 the British gained final possession, after putting down vigorous revolutionists aided by insurgent slaves; and the British title was confirmed by the express exception of St. Lucia from the former possessions to be returned to France by the Treaty of Paris, May 30, 1814.[47] The slaves were emancipated in 1834. The island was under Barbados from 1838 to 1885, and is now administered [48] as a crown colony, with a legislative council partly nominated and partly elected. The language of the people is a French patois. An air and naval base on St. Lucia was one of the eight sites to be leased to the United States for ninety-nine years under the agreement with Great Britain announced on August 20, 1940, subsequently fixed in part at approximately 120 acres on Gros Islet bay.

(*d*) *St. Vincent*

This island, at 13°15′ N latitude, 61°10′ W longitude, lies west of Barbados and twenty-one miles southwest of St. Lucia. It is eighteen miles long and eleven miles wide, with an area of 150 square miles. It was discovered by Columbus on his third voyage on January 22, 1499, and named by him for the patron saint of the day. The Caribs remained undisturbed for many years. It was included in the grant by Charles I of all the Caribbean islands to James Hay, first Earl of Carlisle, on July 2, 1627, confirming a promise made by James I. In 1660 a treaty between the French, British, and natives made this island, with Dominica, neutral, and assigned it to the Caribs. In 1672 it was granted by Charles II to William Lord Willoughby of Parham and in 1722 by George I to the Duke of Montague. The first serious effort at settlement by the British was checked by insistence of the French on the agreed neutrality, which was confirmed by the Treaty of Aix-la-Chapelle, July 8, 1748.[49] In February 1762 Major General

[43] Articles 12, 13. Knapton, *Gen. Coll. of Treaties* (2d ed., London, 1732), I. 127.

[44] Article 5. *Codex Juris Gentium* (Wenck, 1788), II, 311, 333, 342. De Clercq, *Rec. des Tr. de la France* (Paris, 1880), I, 60, 68.

[45] Article 9. Martens, *Rec. de Tr.*, I (1817), 104, 112.

[46] Article 7. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), II, 462. Martens, *Rec. de Tr.*, III (1818), 519.

[47] Article 8. Martens, *Nouv. Rec. de Tr.*, II (1818), 1.

[48] Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1897), I, 175. "Napoleonic Code," *Va. Law Rev.*, XIX (1933), 376.

[49] Article 5. *Codex Juris Gentium* (Wenck, 1788), II, 311, 333, 342. De Clercq, *Rec. des Tr. de la France* (Paris, 1880), I, 60, 68.

Robert Monckton occupied the island, and the Treaty of Paris, February 10, 1763,[50] confirmed British possession. The Caribs refused to recognize British sovereignty, but settlement proceeded; and after some fighting a treaty was made by the British with them in 1773 by which the Caribs were granted lands in the north of the island as a reserve. The island was surrendered to the French in 1779 and restored to the British by the Treaty of Versailles, September 3, 1783.[51] The Caribs, assisted by the French, rose in 1795 but were subdued by Sir Ralph Abercromby in 1796, and the greater part of them were deported to British Honduras in 1797. Slaves were emancipated in 1838; and besides the negroes there are a few Caribs of mixed blood now to be found on the island. The island, with Bequia and the northern half of the Grenadines, is administered [52] by the governor with a legislative council of three other ex-officio members, three nominated, and five elected members.

16. Dutch West Indies

Northwest of the Leeward Islands and east of the Virgin Islands, near 17°40′ N latitude, 63° W longitude, is a group of three small islands belonging to the Netherlands. St. Martin was discovered and named by Columbus on his second voyage, 1493–96. The Dutch West India Company, with letters-patent of June 3, 1621, from the States General, occupied Saba, five square miles in area, in 1640; St. Eustatius (or St. Eustatia), seven square miles in area in 1634; and St. Martin in 1648. Admiral George Brydges Rodney took St. Eustatius for the British in February 1781, but it was retaken by De Bouillé. The Dutch hold only seventeen square miles of the southern part of St. Martin, the rest being French. The islands are governed as part of the Dutch West Indies [1] from Willemstad, the capital, on Curaçao,[2] five hundred miles to the southwest off Venezuela.

17. French West Indies

A. Guadeloupe

The French colony of this name, in 16°20′ to 15°59′ N latitude and 61°31′ to 61°50′ W longitude, between the British islands of Montserrat, thirty miles to the north, and Dominica, twenty-five miles to the south, is really two islands: Grande Terre to the east, twenty-two miles long from north to south (with an area of 255

[50] Article 9. Martens, *Rec. de Tr.*, I (1817), 104, 112.

[51] Article 8. Martens, *Rec. des Prin. Tr.* (Gottingue, 1791), III, 462. Martens, *Rec. de Tr.*, III (1818), 519.

[52] Modes of Legislation. *J. Soc. Comp. Leg.* (London, 1897), I, 177. With Tobago, 1876. 67 *British and Foreign State Papers* 706.

[1] *For. Aff.*, IX (1931), 350.

[2] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 251.

square miles), and Basse Terre or Guadeloupe proper to the west, twenty-eight miles long by fifteen miles wide (with an area of 364 square miles), separated by an arm of the sea called Rivière Salée, 100 to 400 feet wide. They were discovered by Columbus on his second voyage in 1493 and named by him for the monastery of Santa María de Guadelupe at Estremadura, Spain. In 1635 l'Olive and Duplessis took possession for the French Compagnie des Îles d'Amérique; and four French chartered companies in succession were ruined trying to colonize the islands. In 1674 they passed to the French crown and were held until 1775 as a dependency of Martinique. The British failed to capture the islands on attempts in 1666, 1691, and 1703, but succeeded in 1759 and held them until 1763. On April 12, 1782, Admiral George Brydges Rodney defeated the French fleet off Dominica; and the British took Guadeloupe in April 1794. In the summer of 1795 they were driven out by Victor Hugues with the help of slaves freed for the purpose. In 1802 Napoleon Bonaparte sent an expedition to the islands to reëstablish slavery; and the emancipated blacks put up a heroic defense, many of them committing suicide at last rather than submit. By the Treaty of Paris, May 30, 1814,[1] the king of Sweden and Norway consented that the island of Guadeloupe should be restored to the king of France, in consideration of 24,000,000 livres paid by Great Britain to Sweden.[2] The British forces under Lieutenant-General James Leith and Admiral Sir Philip Charles Durham captured the islands on August 10, 1815,[3] on behalf of King Louis XVIII, from the Bonapartist Governor-General Comte de Linois; and the French received the islands back in 1816. In 1848 slavery was abolished, and Napoleon III granted a constitution to the islands, May 3, 1854.[4] There are five dependencies of smaller islands: Désirade, Îles des Saintes, Marie Galante, St. Barthélemy, and the northern part of St. Martin. St. Barthélemy, formerly called also Gustavia, at 17°55′ N latitude, 62°45′ W longitude, ten square miles in area, was occupied by the Dutch West India Company with letters-patent of June 3, 1621, from the States General. It later became Swedish and was taken by the British Admiral Sir John Thomas Duckworth in the short war of March–April 1801. It was one of the most important bases in the West Indies of the Buenos Aires privateers against Spain in the wars for independence, 1815–21. After consulting the population of the island, Sweden agreed to sell St. Barthélemy to France for 400,000 francs and the retrocession was carried out by a treaty signed at Paris, August 10, 1877.[5] The island was

[1] Article 9. Martens, *Nouv. Rec. Gén. de Traités*, II (1818), 1, 7. De Clercq, *Rec. des Tr. de la France* (Paris, 1880), II, 414.

[2] Convention signed at London, Aug. 13, 1814. 2 *British and Foreign State Papers* 367.

[3] 2 *British and Foreign State Papers* 1048, 1055.

[4] 44 *British and Foreign State Papers* 1107. Modified, July 4, 1886. 56 *British and Foreign State Papers* 199.

[5] Ratifications exchanged at Paris, March 6, 1878. 68 *British and Foreign State Papers* 624. *British Year Book of Int. Law*, XX (1939), 189.

attached as a dependency to Guadeloupe by a law of March 2, 1878.[6] A severe hurricane swept the island in September 1928. The colony of Guadeloupe is administered by a governor and an elected council, and is represented by a senator and two deputies in the French Chambers.

B. Martinique

This French colony, northernmost of the Windward Islands, at 14°40′ N latitude and 61° W longitude, twenty-five miles south of Dominica and twenty miles north across the St. Lucia Channel from St. Lucia, is forty miles long by twenty-one miles wide, with an area of 385 square miles. It was probably discovered by Columbus on his fourth voyage, June 15, 1502, then inhabited by the newly arrived Caribs, and called Madiana, Mantinino, or Martinino. On June 25, 1635, possession was taken for the French Compagnie des Îles d'Amérique. In 1654 settlement was begun by Pierre Belain, French captain-general of St. Christopher, and augmented by the landing the same year of three hundred Jews expelled from Brazil. In 1666 and 1667 the island was attacked by the British, but hostilities were ended by the treaty of peace between France and England concluded at Breda, July 21, 1667.[7] The island was purchased from the owners for 120,000 livres and assigned to the West India Company, but in 1674 became part of the French royal domain. In 1674 the Dutch attacked the island, and in 1695 the British. It was captured by Admiral George Brydges Rodney and Major General Robert Monckton from New York, with nearly twelve thousand land forces, in February 1762 but restored to France in 1763. It was captured again by the British in 1793 and held until 1801; and again in 1809 and held until 1814. A severe eruption of Mont Pelée (4,430 feet high) on May 8, 1902, did great damage, destroying the town of St. Pierre and causing an estimated loss of 40,000 lives. The colony[8] is administered[9] by a governor with a privy council and an elected general council, and is represented by a senator and two deputies in the French Chambers.

C. St. Pierre et Miquelon

These islands are of course not in the West Indies, but complete the tale of European colonies in the western hemisphere. This is a group of small nearly barren islands at 47° N latitude, 56°20′ W longitude, twelve miles south and west of Crew or May Point, on the central south shore of Newfoundland. Grande

[6] 69 *British and Foreign State Papers* 300.

[7] Knapton, *Gen. Collection of Treaties* (2d ed., London, 1732), I, 127.

[8] Reunion Island, frequently mentioned with Guadeloupe and Martinique in French colonial legislation, is in the Indian Ocean, east of Madagascar.

[9] *Lois Org. des Colonies* (Paris, 1906), 8e Sér., II, 59, 137, 145, 166.

Miquelon, about nine miles long by five miles broad, with an area of forty-eight square miles, has since 1783 been joined by a shingle bank, five and a half miles long and at its narrowest a quarter of a mile wide, to Petite Miquelon or Langlade, to the south, about seven miles long by five miles broad, with an area of thirty-five square miles. Saint Pierre, three miles southeast of Petite Miquelon across La Baie channel, is five miles long and three and a half miles broad, with an area of ten square miles, and the adjacent Île aux Chiens is less than a mile long and about a quarter of a mile broad. In 1583 Sir Humphrey Gilbert raised the English flag on Newfoundland, and the French claim to have had a settlement on that island in 1635. They founded and fortified Plaisance in 1662, and the islands of Saint Pierre and Miquelon were subordinate to that colony until 1702, when all the French insular settlements were captured by the British fleet. The Treaty of Utrecht, April 11, 1713,[10] left them with Great Britain, but gave French subjects the right to dry fish on the coast of Newfoundland from Cape Bonavista on the north down to Point Riche on the west. The Treaty of Paris, February 10, 1763,[11] reaffirmed (Article 5) the French fishery rights as to Newfoundland, and provided:

> Art. 6. The King of Great Britain cedes the islands of St. Pierre and of Miquelon in full right to His Most Christian Majesty to serve as a shelter to the French fishermen, and his said Most Christian Majesty engages not to fortify the said islands, to erect upon them only civil buildings for the convenience of the fishery, and to keep there only a guard of 50 men for police.

The islands were then peopled largely by expatriated French from Nova Scotia. When France joined the American colonies in war against England in 1778, the British fleet again took the islands, but they were restored by the Treaty of Versailles, September 3, 1783,[12] which defined more strictly the rights of fishery and drying fish on the shore of Newfoundland and in accompanying declarations agreed that the islands of St. Pierre and Miquelon should not become an object of jealousy between the two nations, and that fishing should be carried on by either party only to the middle of the channel. The islands were retaken by Great Britain in 1793, restored to France by the Treaty of Amiens, March 25/27, 1802,[13] captured by the British in 1803, and finally returned to France by the Treaty of Paris, May 30, 1814,[14] with the fishery as it existed in 1792. Great Britain apparently maintains that the French sovereignty is limited to the purpose of the fisheries, and does not extend to a right to cede the islands to any

[10] Article 13. De Clercq, *Rec. des Tr. de la France* (Paris, 1880), I, 6.

[11] Martens, *Rec. de Tr.*, I (1817), 104, 110. De Clercq, *Rec. des Tr. de la France* (Paris, 1880), I, 89.

[12] Articles 4, 5, 6. Martens, *Rec. des Prin. Tr.* (Gottingue, 791), II, 462, 465, 472, 474. Martens, *Rec. de Tr.*, III (1818), 519, 522, 529, 531.

[13] Article 15. Martens, *Rec. des Prin. Tr.* (Gottingue, 1831), VII, 404, 411.

[14] Article 13. Martens, *Nouv. Rec. Gén. de Traités*, II (1818), 1, 7.

other power, or to fortify them. By the Convention of London, April 8, 1904,[15] the French right to dry fish on the Newfoundland shore is abandoned, and the fishery rights are otherwise modified.[16] The population of about 4,000, mostly at the town of Saint Pierre, is decreasing, the younger men not being inclined to deep-sea fishing and the youth of both sexes emigrating to Canada and the United States. The islands have been administered [17] since 1921 [18] by a governor, with a consultative council; and these ninety-three square miles of rock are all that remain of French colonial possessions in North America.

18. United States West Indies

A. Puerto Rico

This island, the most easterly of the Greater Antilles, at 18°30′ to 17°50′ N latitude and 65°30′ to 67°15′ W longitude, is forty miles west across the Virgin Passage from St. Thomas, of the United States Virgin Islands, seventy miles east across Mona Passage from the Dominican republic on the island of Haiti, and fourteen hundred miles southeast of New York City. It is roughly rectangular, a hundred miles long and from thirty-five to forty miles wide, with an area of 3,435 square miles. It was discovered by Columbus on his second voyage, November 19, 1493, and named San Juan Batista in honor of Prince Juan, heir to the Spanish throne. In 1505 Ferdinand granted the island to Vicente Yáñez de Pinzón,[1] who was with Columbus in 1493 but never visited it again, being busy in South America, and sold his rights. In 1508 Juan Ponce de León came with an expedition from Santo Domingo and formed a settlement at Caparra; soon after, he moved a few miles north to San Juan, on an island in the excellent harbor which he found and called Puerto Rico. By a curious inversion, the names of the harbor and of the island have since become exchanged. In 1510 Ferdinand made Ponce de León governor, the first of a hundred and forty-two Spanish governors down to October 18, 1898.

The French tried to seize the island in 1528. In 1533 the Spanish began building at San Juan La Fortalesa, which was never completed as a fort but was converted into a governor's palace, as which it has been in use ever since. Morro Castle was erected at the entrance to the harbor and San Cristóbal fortress on the Atlantic side of the city. There were numerous raids on the island by pirates and

[15] Ratifications exchanged at London, Dec. 8, 1904. 97 *British and Foreign State Papers* 31. De Clercq, *Rec. des Tr. de la France* (Paris, 1907), XXII, 517.

[16] 100 *British and Foreign State Papers* 907.

[17] *Lois Org. des Colonies* (Paris, 1906), 8e Sér., II, 539–568.

[18] Decree of July 21, 1921. *Rec. de Leg. Col.* (Darest, Paris, 1922), XXV, 59.

[1] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), 230.

Dutch, English, and French freebooters; and San Germán was completely destroyed by the French in 1554. When discovered, the island was inhabited by Borinqueños, Indians who lived in groups under caciques; but in 1582 there were none left. In 1595 Sir Francis Drake attempted to capture San Juan, but failed; and on June 5, 1598, George Earl of Cumberland entered the city after two weeks of desperate land fighting, but could not take the forts and retired. In 1625 the Dutch with seventeen ships and twenty-five hundred men attacked and took the city, but could not capture Morro Castle and soon withdrew. The British fleet threatened again in 1797, but after two weeks of bombardment of the fortifications gave up the attempt. In 1816 the pirates from neighboring islands made so much trouble that a United States fleet under Commodore David Porter undertook a campaign against them, entering San Juan harbor under fire, after refusal of permission from the Spanish authorities. An expedition headed by "General" Luis V. Ducoudray Holstein fitted out in Philadelphia in September 1822 with the brig *Mary*, under Captain Aaron Burns, to raise the inhabitants of Puerto Rico in revolt against Spain, establish independence, and set up the republic of Boüqua. After touching at St. Bartholomew, the expedition arrived at Curaçao on September 19, 1822, where the commander-in-chief and some of the other principals were taken into custody by the governor and the plan completely checked.[2] The only rebellion in Puerto Rico's history, in the mountain town of Lares in 1868, was partly managed by a Venezuelan and Matthew Bruckman, a United States citizen, both of whom were killed. Slavery was abolished in March 1873. Puerto Rico, called by Spain "the ever-faithful," was never captured by any other nation, and remained Spanish until 1898, governed for the most part with Cuba.

In the Spanish-American War, General Nelson A. Miles landed with 3,300 troops at Guanica on the southern coast on July 25, 1898, and after a short campaign in which the weak Spanish troops constantly retired, Puerto Rico, with Mona and Monito Islands at 18°05′ N latitude and 67°55′ W longitude to the west, and Culebra and Viéques Islands of the Virgin Islands group across Viéques Sound to the east, was wholly turned over to the 17,000 American expeditionary forces on October 18, 1898.[3] After the Treaty of Paris, December 10, 1898,[4] General John R. Brooke was made military governor, and the army continued in control until May 1, 1900. Successive steps in popularizing the administration

[2] *American State Papers*, Misc. (Washington, 1834), II, 1028–1040. H. Doc. 540, 17th Cong., 2d Sess. (Washington, 1823).

[3] Downes *v.* Bidwell (1901), 182 U. S. 244, 21 S. Ct. 770, 45 L. Ed. 1088. Ribas y Hijo *v.* United States (1904), 194 U. S. 315, 24 S. Ct. 727, 48 L. Ed. 994. Ponce *v.* R.C.A. Church (1908), 210 U. S. 296, 28 S. Ct. 737, 52 L. Ed. 1068. *Ops. Atty. Gen. U. S.* (Washington, 1902), XXIII, 551. *Yale Law Journal*, X (1910), 136.

[4] See Sec. 7, this chap., *supra*.

by the United States have been the Foraker Act [5] providing for civil government; the Olmsted Act [6] providing for government by an executive department, although President William Howard Taft selected the War Department; and the Jones Act [7] making the island an organized but unincorporated territory of the United States. Subsequently, there have been periodic agitations for statehood, complaints against the governors,[8] and other demonstrations sponsored by the local political parties.[9] When the United States Army took control, with its usual self-given wisdom in all things, it decreed that the name should be Porto Rico and the misspelling lasted for thirty-three years until Congress [10] ordered resumption of the correct and original Spanish.

B. Virgin Islands

The largest three of the Virgin Islands group, with a total area of 132.47 square miles, discovered by Columbus on his second voyage, in 1493, have been held in turn by Spain, France, Great Britain, the Netherlands, Denmark, and the United States. St. Croix, the largest, at 17°40′ N latitude and 64°14′ W longitude, twenty-two miles long and one to six miles wide, with an area of eighty-four square miles, sixty-five miles southeast of Puerto Rico, was named by Columbus Santa Cruz. In 1651 it was taken by the French; in 1653 it was given to the Knights of Malta; and in 1733 it was purchased by Denmark. In 1848, after a violent insurrection, slavery was abolished.[11] St. John, ten miles long and two and a half miles wide, with an area of twenty-one square miles, lies thirty-eight miles north of St. Croix. In 1801 it was taken by the British Admiral Sir John Thomas Duckworth in the short war of March–April 1801, but restored to Denmark in 1802; taken again by the British in 1807 and again restored to Denmark

[5] Act of April 12, 1900, c. 191; 31 Stat. L. 77. Proclamation by President William McKinley, July 25, 1901; 32 Stat. L. II, 1983. 92 *British and Foreign State Papers* 742.

[6] Act of July 15, 1909, c. 4; 36 Stat. L. I, 11.

[7] Act of March 2, 1917, c. 145; 39 Stat. L. 951. Amended, Feb. 3, 1921, c. 34, 41 Stat. L. 1096; June 7, 1924, c. 322, 43 Stat. L. 631; March 4, 1927, c. 503, 44 Stat. L. 1418; Feb. 18, 1931, c. 218, 46 Stat. L. 1168. 112 *British and Foreign State Papers* 1169; 120 *ibid.* 979. *Amer. J. Int. Law*, XI (1917), Supp., 66.

[8] The United States military governors were:

1 John R. Brooke, Oct. 18, 1898 to Dec. 5, 1898.
2 Guy V. Henry, Dec. 6, 1898 to May 18, 1899.
3 George W. Davis, May 18, 1899 to May 1, 1900.

The United States civil governors have been:

4 Charles Herbert Allen, May 1, 1900 to Sept. 14, 1901.
5 William H. Hunt, Sept. 15, 1901 to July 3, 1904.
6 Beekman Winthrop, July 4, 1904 to Apr. 7, 1907.
7 Régis Henri Post, Apr. 8, 1907 to Nov. 5, 1909.
8 George Radcliffe Colton, Nov. 6, 1909 to Nov. 5, 1913.
9 Arthur Yager, Nov. 6, 1913 to May 16, 1921.
10 E. Montgomery Reily, May 17, 1921 to Apr. 1, 1923.
11 Horace Mann Towner, Apr. 6, 1923 to May 1929.
12 Theodore Roosevelt, Oct. 7, 1929 to Jan. 9, 1932.
13 James Rumsey Beverley, Jan. 30, 1932 to July 1, 1933.
14 Robert Hays Gore, July 1, 1933 to Jan. 12, 1934.
15 Blanton Winship, Feb. 5, 1934 to June 3, 1939.
16 William Daniel Leahy, June 6, 1939 to Nov. 28, 1940.
17 Guy J. Swope, Jan. 6, 1941.

[9] *For. Aff.*, VIII (1930), 609–619; XII (1934), 271–280. *Amer. J. Int. Law*, IX (1915), 883; X (1916), 65, 312; XV (1921), 530.

[10] Act of May 17, 1932, c. 190; 47 Stat. L. 158. *Cong. Rec.*, 72d Cong., 1st Sess., LXXV, IV, 4129; VIII, 8846; IX, 10016, 10022, 10025, 10027–28, 10030–33, 10074.

[11] 32 *British and Foreign State Papers* 399–412.

in 1815. It has in Coral Bay the best harbor of refuge in the Antilles. St. Thomas, the most important of the group, at 18°20′ N latitude and 64°55′ W longitude, four miles west of St. John and forty miles east of Puerto Rico, 1,442 miles S 20° E from New York City and 1,029 miles from the Panama Canal, is twelve miles long and one to three miles wide, with an area of 27.12 square miles. In 1657 a colony was started on the island by the Dutch, who soon abandoned it and removed to New Amsterdam. In 1666 the Danes took formal possession, but their first colony also failed. An expedition under Governor Jorgen Iversen sent out by the Danish West India Company landed on May 25, 1672, and made the first permanent settlement, soon after augmented by Huguenot refugees from the French in St. Kitts. In 1755 the king of Denmark acquired the West India Company's rights. St. Thomas, with St. John, was taken by the British in March–April 1801 but restored to Denmark in 1802, taken again by the British in 1807 and again restored to Denmark in 1815. The islands were administered by a governor under the king and colonial council of Denmark. In 1898 Culebra and Viéques Islands of the Spanish Virgin Islands were transferred with Puerto Rico[12] from Spain to the United States.

After negotiations by Secretary of State William H. Seward, a treaty between the United States and Denmark for the sale of the islands for $7,500,000 was signed on October 24, 1867, but rejected by the United States Senate, on opposition led by Senator Charles Sumner, in March 1870.[13] The cession was considered again in 1892 and in 1898, but without definite results. A convention for the cession of the islands for $5,000,000 signed at Washington, January 24, 1902, failed of ratification by a tie vote in the Danish Landsthing on October 22, 1902.[14] Discussions were renewed in June 1905 [15] and continued at intervals until under Secretary of State Robert Lansing the matter was taken up seriously in March 1915.[16] By a treaty signed at New York on August 4, 1916,[17] the three Danish [18] islands were purchased by the United States for $25,000,000, and the United States took possession on March 31, 1917.[19] At the time of signing the treaty Secretary Lansing formally declared that,

> the Government of the United States of America will not object to the Danish Government extending their political and economic interests to the whole of Greenland.

[12] See Sec. 18A, this chap., *supra*.

[13] *Amer. J. Int. Law*, X (1916), 856.

[14] Ratified by United States, March 1, 1902. *U. S. For. Rel.*, 1917, pp. 457–544.

[15] *U. S. For. Rel*, 1917, pp. 545–588.

[16] *U. S. For. Rel.*, 1917, pp. 588–706. *U. S. For. Rel.*, The Lansing Papers, II (1940), 501–511.

[17] Ratifications exchanged at Washington, Jan. 17, 1917. 39 Stat. L. II, 1706. *U. S. Treaty Series*, No. 629. *For. Aff.*, IV (1926), 503. *Treaties of the U. S.* (Malloy, 1923), III, 2558. *Amer. J. Int. Law*, X (1916), 853; XI (1917), 413. Charles C. Tansill, *The Purchase of the Danish West Indies* (Baltimore, 1932), 548 pp. *Rev. gén. de dr. int. pub.*, XXIV (1917), 454.

[18] The acting governor for the transfer was Captain H. Konow of the Royal Danish Navy.

[19] The United States governors under the Navy Department were:

1 Edwin T. Pollock, Mar. 31, 1917 to Apr. 9, 1917.
2 James H. Oliver, Apr. 9, 1917 to Apr. 8, 1919.
3 Joseph Wallace Oman, Apr. 8, 1919 to Apr. 26, 1921.

On August 3, 1921,[20] Secretary of State Charles E. Hughes notified Denmark that as to Greenland,

> owing to the importance of its geographical position, this Government would not be disposed to recognize the existence in a third government of the right of preëmption to acquire the interests of the Danish Government in this territory should the latter desire to transfer them.

The islands were by the Organic Act of 1917 [21] to be governed under an army or navy officer. The capital, Charlotte Amalia or Amalie, named by the Danes in honor of the Consort of Christian V, was renamed St. Thomas by Secretary of the Navy Edwin Denby in 1921. Full United States citizenship was given in 1927 to natives and residents of and after January 17, 1917.[22] The islands were transferred from the Navy to the Department of the Interior on March 18, 1931,[23] and are now governed under the Organic Act of 1936.[24]

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4 Summer Ely Wetmore Kittelle, Apr. 26, 1921 to Sept. 16, 1922.
5 Henry Hughes Hough, Sept. 16, 1922 to Dec. 3 1923.
6 Philip Williams, Dec. 3, 1923 to Sept. 11, 1925.
7 Martin Edward Trench, Sept. 11, 1925 to Jan. 6 1927.
8 Waldo Evans, Mar. 1, 1927 to Mar. 18, 1931.

The United States governors under the Interior Department have been:

9 Paul M. Pearson, Mar. 18, 1931 to July 23, 1935.
10 Lawrence William Cramer, Aug. 31, 1935 to Dec. 11, 1940.
11 Charles Harwood, Jan. 6, 1941.

[20] *U. S. For. Rel.*, 1917, pp. 694, 700; 1922, II, 1–4.
[21] Act of March 3, 1917, c. 171; 39 Stat. L. I, 1132.
[22] Act of Feb. 25, 1927, c. 192; 44 Stat. L. II, 1234. 127 *British and Foreign State Papers* 940.
[23] *For. Aff.*, X (1932), 295.
[24] Act of June 22, 1936, c. 699; 49 Stat. L. I, 1807. *For. Aff.*, XVII (1939), 799.

CHAPTER III

EXISTING TREATY RELATIONS

[Treaties in brackets are not in force]

A. General Considerations

FROM almost the moment of independence the small countries of Central America dallied with the idea of union in a federation of some sort, all approving the supposed greater strength such combination would bring, and failing of agreement only from the circumstance that each state insisted always on being the principal and leader in the hegemony. The Federal Republic of Central America of 1824 which grew out of the Mexican General Filisola's assembly at Guatemala City in June 1823,[1] lasted until May 1838, longer than any of the subsequent attempts. From General Simon Bolívar's Congress of Panama, June 22–July 15, 1826,[2] a greater Latin–American union over both South and Central America was hoped for, but besides Colombia, which then held Panama, only Guatemala of the Central American states was represented, with Mexico and Peru, and nothing permanent was accomplished. Partial unions, as distinguished from alliances, of three or more states were set up in 1872, 1889, 1892, 1895, 1897, 1898, and 1921, but none was in actual operation or lasted more than two years. Of the forty-five possible pairs of the ten Central American and Caribbean nations, one has a general arbitration treaty (Sec. 24) and nine have peace and friendship treaties providing for arbitration in a general way (Secs. 3, 5, 9, 19, 26, 36, 37, 39, and 42). In the forty-four cases with no bipartite arbitration treaties, one pair of nations (Sec. 4) has ratified five multipartite treaties, five pairs (Secs. 1, 2, 6, 8, 9) seven treaties, four pairs (Secs. 7, 19, 31, 35) eight treaties, seven pairs (Secs. 3, 9, 12, 25, 32, 33, 34) nine treaties, twelve pairs (Secs. 10, 13, 17, 20, 22, 23, 36, 38, 39, 42, 44, 45) ten treaties, ten pairs (Secs. 11, 14, 15, 16, 18, 21, 29, 40, 41, 43) eleven treaties, two pairs (Secs. 27, 30) twelve treaties, one pair (Sec. 37) thirteen treaties, and two pairs (Secs. 26, 28) fourteen treaties. Of the one hundred possible pairs of the Central American and Caribbean nations with the South American nations, ten have general arbitration treaties (Secs. 48, 58, 68, 88, 98, 108, 110, 138, 140, and 144) and four have peace and friendship treaties providing for arbitration in a general way (Secs. 51, 111,

[1] See Chap. I, Sec. 4, *supra*.

[2] See Chap. I, Sec. 15A, *supra*.

141, and 145). In the ninety cases with no bipartite arbitration treaties, twelve pairs of nations (Secs. 46, 47, 56, 66, 76, 86, 96, 97, 106, 116, 126, and 136; ten with Argentina) have ratified one multipartite treaty; six pairs (Secs. 54, 57, 67, 87, 117, and 127) two treaties; eight pairs (Secs. 53, 64, 77, 94, 107, 124, 134, and 137) three treaties; five pairs (Secs. 52, 74, 84, 104, and 114) four treaties; ten pairs (Secs. 55, 63, 72, 93, 102, 103, 123, 133, 142, and 143) five treaties; ten pairs (Secs. 51, 62, 73, 82, 83, 92, 112, 113, 122, and 132) six treaties; seven pairs (Secs. 49, 50, 75, 90, 95, 105, and 145) seven treaties; seven pairs (Secs. 65, 85, 89, 91, 115, 125, and 135) eight treaties; nine pairs (Secs. 60, 70, 71, 80, 100, 101, 120, 130, and 139) nine treaties and sixteen pairs (Secs. 59, 61, 69, 78, 79, 81, 99, 109, 111, 118, 119, 121, 128, 129, 131, and 141) ten treaties. Brazil has concluded general arbitration treaties with seven of the ten Central American and Caribbean nations. As in the former volume, there are listed arbitration treaties between any two of the Latin–American nations, whether or not they are adjacent or possess detached islands so that any land dispute would be possible between them; and the multipartite treaties are included, as before. The Hitler war shows signs of driving the American republics into closer military and economic union, but whether any lasting international arbitration tribunal will develop out of the consolidating pressure it is yet too early to determine. Fifteen bilateral arbitrations [3] were sanctioned by special treaties from 1827 to 1930 to determine the whole or parts of seven boundaries, each of the Central American republics being party to at least one. Seven arbitrations were unfinished; [4] three awards adopted nearly or wholly the line of one of the disputants,[5] and five drew mainly a compromise line.[6] In addition to the boundary disputes there was an arbitration between Mexico and France to determine the title to Clipperton Island,[7] and the award by the president of France between Costa Rica and Colombia covered islands in both the Atlantic and the Pacific. The arbiters were in four cases plural tribunals[8] and in twelve cases nominally individuals,[9] one of the proposed tribunals being changed to a single arbiter by action of the representatives.[10] Three times the losing party protested against the award on legal grounds,[11] and of the nine awards six have never been carried out,[12] three have been executed.[13] Demarcation commissions have been numerous and generally slow, but successful.

[3] Chap. I, Secs. 1, 2A, 2B, 3, 4, 8, 9, 16A and 16B, *supra*.

[4] Chap. I, Secs. 2A, 3 (two), 4 (two), 9 (two), *supra*.

[5] Chap. I, Secs. 1, 8, 16A, *supra*.

[6] Chap. I, Secs. 2A, 2B, 4, 16A, 16B, *supra*.

[7] Chap. II, Sec. 4, *supra*.

[8] Special Tribunal of Three, Chap. I, Sec. 4; Three Diplomatic Representatives, Sec. 8; Six Jurists, Sec. 16A; Three Commissioners, Sec. 16B.

[9] The Pope, Chap. I, Sec. 3 (two); emperor of Germany, Sec. 16A; king of Italy, Chap. II, Sec. 4, of Netherlands, Chap I, Sec. 16A, of Spain, Sec. 2A; president of France, Sec. 2A, of Nicaragua, Sec. 9, of Salvador, Sec. 4, of United States, Secs. 1, 4; Chief Justice of United States, Sec. 2B.

[10] Chap. I, Sec. 8; king of Spain.

[11] Chap. I, Sec. 2B, Costa Rica, for *ultra petita*; Sec. 2B, Panama, for exceeding arbitration terms; Sec. 8, Nicaragua, for multiple vices.

[12] Chap. I, Secs. 1, 2B (two), 8, 16A, 16B, *supra*.

[13] Chap. I, Sec. 16A (two); Chap. II, Sec. 4, *supra*.

Central America [14] has added little that is new [15] to the doctrine of *uti possidetis*. In the Costa Rica arbitrations with Colombia in 1900 and with Panama in 1913,[16] Costa Rica contended [17] (notwithstanding her own constitutions from 1848 to 1871) for the historic colonial boundary, as against the *uti possidetis* of 1810 or 1826 urged by Colombia and later by Panama, with no decision on the question. The Dominican Republic and Haiti differed over the interpretation of the term "actual possessions" in their treaty of November 9, 1874,[18] the Dominican Republic holding out for the territory held in 1856 and Haiti claiming the line actually occupied when the treaty was signed. These conflicting claims were set forth in the fruitless arbitration convention of July 3, 1895, and the difficulty was not settled until, in the treaty of January 21, 1929, both sides abandoned references to any earlier *uti possidetis* and described the boundary line in detail. Guatemala and Honduras in their boundary treaty of July 16, 1930,[19] agreed that the only juridical line between them was that of the *uti possidetis* of 1821, and the arbitration tribunal followed that line in its award, so far as it could be proved to their satisfaction.[20] In a less particularized sense than as applied to boundary questions, international law text writers use *uti possidetis* to summarize the principle that at the end of a war the restoration of captured movable property is made, by general clauses in the treaties of peace, solely by the generosity of the victorious belligerents.[21]

B. Bipartite Treaties

I. Central America

1. Costa Rica–Cuba

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 (three) described in Secs. 160, 162, 165, 167, 169, 170, and 171, *infra*.

2. Costa Rica–Dominican Republic

There appears to be no treaty of arbitration in existence between these countries.

[14] B. Checa Drouet, *La Doctrina Americana del Uti Possidetis de 1810* (Lima, 1936), 155 pp. Bustamante, *Der. Int. Pub.* (Habana, 1936), III, 23.

[15] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), App. B, 321–329.

[16] See Chap. I, Sec. 2B, *supra*.

[17] John Bassett Moore, *Memo. on Uti Possidetis* (for Costa Rica) (Rosslyn, Va., 1913), 51 pp. *Amer. J. Int. Law*, XXVII (1933), 312.

[18] See Chap. I, Sec. 3, *supra*.

[19] See Chap. I, Sec. 4, *supra*.

[20] *Amer. J. Int. Law*, XXVII (1933), 414–427.

[21] Calvo, *Dr. Int. Th. et Prat.* (5e ed., Paris, 1896), V, 380. Birkenhead, *Int. Law* (6th ed., London, 1927), 295. Lawrence, *Prin. of Int. Law* (7th ed., New York, 1923), 562. Oppenheim, *Int. Law* (4th ed., London, 1926), II, 426, 438. *Wheaton's Elements of Int. Law* (Keith, 6th Eng. ed., London, 1929), II, 1207.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 (three) described in Secs. 160, 162, 165, 167, 169, 170, and 171, *infra*.

3. Costa Rica–Guatemala

Treaty [22] of peace and friendship providing (Article 1) for obligatory arbitration of any difference between them, by special agreement for the case.

Signed at Guatemala City, May 15, 1895; ratifications exchanged at San José July 11, 1896.

Both states have ratified the treaties of 1907, 1923 (two), 1928, 1933 (two), and 1936 (three) described in Secs. 155, 158, 160, 162, 165, 167, 169, 170, and 171, *infra*.

4. Costa Rica–Haiti

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1933, and 1936 (two), described in Secs. 160, 162, 165, 169, and 170, *infra*.

5. Costa Rica–Honduras

[Treaty [23] of peace and friendship providing (Article 1) for obligatory arbitration of any difference between them.]

Signed at Tegucigalpa, January 20, 1891.

Treaty [24] of peace and friendship providing (Article 2) for obligatory arbitration of any difference between them, by any one of the governments of Central America.

Signed at San José, September 28, 1895; ratifications exchanged at San José, September 3, 1896.

Both states have ratified the treaties of 1907, 1923 (two), 1928, 1933 (two), and 1936 (three) described in Secs. 155, 158, 160, 162, 165, 167, 169, 170, and 171, *infra*.

6. Costa Rica–Mexico

There appears to be no treaty of arbitration in existence between these countries.

[22] *Col. de Trats.* (San José, 1907), 117. *Arb. Treaties* (Manning, 1924), 241.

[23] *Col. de Trats. Int.* (San José, 1893), II, 415.

[24] *Col. de Trats.* (San José, 1907), 125. *Arb. Treaties* (Manning, 1924), 241.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 (three) described in Secs. 160, 162, 165, 167, 169, 170, and 171, *infra*.

7. Costa Rica–Nicaragua

[Treaty [25] of peace, friendship, commerce, and extradition providing (Article 2) for obligatory arbitration of any difference between them.]

Signed at San José, October 9, 1885.

[Treaty [26] for the establishment of an Eastern Diet of Central America, for the decision of any difficulty whatever between the parties; other republics of Central America to be invited to adopt it.]

Signed at Managua, November 16, 1891.

Both states have ratified the treaties of 1923 (two), 1928, 1933 (two), and 1936 (three) described in Secs. 158, 160, 162, 165, 167, 169, 170, and 171, *infra*.

8. Costa Rica–Panama

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 (three) described in Secs. 160, 162, 165, 167, 169, 170, and 171, *infra*.

9. Costa Rica–Salvador

[Treaty [27] of peace and friendship, providing (Article 2) for obligatory arbitration of any difference between them (Article 3) by special agreement for the case.]

Signed at San José, November 28, 1885.

[Convention [28] of non-intervention providing (Article 10) for arbitration of any question not satisfactorily explained between them.]

Signed at San José, November 27, 1890.

Treaty [29] of peace and friendship, providing (Article 1) for obligatory arbitration of any difference between them, by special agreement for the case.

Signed at San Salvador, June 12, 1895; ratifications exchanged at San José, July 30, 1896.

[25] *Col. de Trats. Int.* (San José, 1893), II, 379. *Col. de Trats. Int.* (Bonilla, Managua, 1909), 489. *Arb. Treaties* (Manning, 1924), 146.

[26] *Col. de Trats. Int.* (Bonilla, Managua, 1909), 531.

[27] Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 246.

[28] *Col. de Trats. Int.* (San José, 1893), II, 411.

[29] *Col. de Trats.* (San José, 1907), 193. *Arb. Treaties* (Manning, 1924), 233.

Both states have ratified the treaties of 1907, 1923, 1933 (two), and 1936 (three) described in Secs. 155, 160, 165, 167, 169, 170, and 171, *infra*.

Cuba–Costa Rica

No bipartite treaty of arbitration. See Sec. 1, this chap., *supra*.

10. Cuba–Dominican Republic

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

11. Cuba–Guatemala

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

12. Cuba–Haiti

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

13. Cuba–Honduras

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

14. Cuba–Mexico

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933

(two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

15. Cuba–Nicaragua

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

16. Cuba–Panama

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

17. Cuba–Salvador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

Dominican Republic–Costa Rica

No bipartite treaty of arbitration. See Sec. 2, this chap., *supra*.

Dominican Republic–Cuba

No bipartite treaty of arbitration. See Sec. 10, this chap., *supra*.

18. Dominican Republic–Guatemala

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 150, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

19. Dominican Republic–Haiti

Treaty [30] of peace and friendship, providing (Article 3) for obligatory arbitration of every difference between them of an international character of a juridical nature (Article 4), not including controversies within the domestic jurisdiction of either party or subject to the competence of their respective tribunals.

Signed at Santo Domingo, February 20, 1929; ratified by the Dominican Republic, March 14, 1929; ratified by Haiti, May 23, 1929; ratifications exchanged at Santo Domingo, July 1, 1929.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

20. Dominican Republic–Honduras

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

21. Dominican Republic–Mexico

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 150, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

22. Dominican Republic–Nicaragua

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

23. Dominican Republic–Panama

There appears to be no treaty of arbitration in existence between these countries.

[30] *Trats. y Convs. Int. Vig.* (Ciudad Trujillo, 1937), I, 117. *League of Nations Treaty Series*, No. 2414, CV, 216. 130 *British and Foreign State Papers* 580. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXVIII (1934), 701.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

24. Dominican Republic–Salvador

Convention [31] for arbitration (Article 1) of controversies and difficulties of every sort between them, (Article 2) by special agreement for the case.

Signed at Paris, July 3, 1882; ratifications exchanged at Paris, October 16, 1883.

Both states have ratified the treaties of 1902, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 150, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

Guatemala–Costa Rica

General treaty of 1896, including arbitration. See Sec. 3, this chap., *supra*.

Guatemala–Cuba

No bipartite treaty of arbitration. See Sec. 11, this chap., *supra*.

Guatemala–Dominican Republic

No bipartite treaty of arbitration. See Sec. 18, this chap., *supra*.

25. Guatemala–Haiti

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

26. Guatemala–Honduras

Treaty [32] of peace, friendship, commerce, and extradition, providing (Article 2) for arbitration of any difference between them.

Signed at Guatemala City, March 2, 1895; ratifications exchanged at Guatemala City, January 20, 1896.

Both states have ratified the treaties of 1907, 1923 (four), 1928, 1929 (two),

[31] *Trats. y Convs. Int. Vig.* (Ciudad Trujillo, 1937), I, 23. *Col. de Trats. de Salvador* (San Salvador, 1884), 298. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 85. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 207. *Arb. Treaties* (Manning, 1924), 128.

[32] *La Gaceta* (Tegucigalpa, 1895), XIX, 357, 361. 87 *British and Foreign State Papers* 673. *Arb. Treaties* (Manning, 1924), 227.

1933 (two), and 1936 (four) described in Secs. 155, 157, 158, 159, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

27. Guatemala–Mexico

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 150, 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

28. Guatemala–Nicaragua

[Treaty [33] of friendship, commerce, and navigation providing (Article 2) for arbitration of any difference, by the government of a friendly nation.]

Signed at Guatemala City, January 23, 1899.

Both states have ratified the treaties of 1907, 1923 (four), 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 157, 158, 159, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

29. Guatemala–Panama

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

30. Guatemala–Salvador

[Treaty [34] of peace and friendship, providing (Article 5) for arbitration of every question or difference between them (Article 6) by special agreement for the case.]

Signed at Guatemala City, November 15, 1890; ratifications exchanged, July 1, 1891.

Both states have ratified the treaties of 1902, 1907 (two), 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 150, 154, 155, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*. The war of June 1906 may be supposed to have put an end to the first of these, as between these two countries.

[33] *Col. de Trats. Int.* (Bonilla, Mangua, 1909), 99.

[34] *Der. Int. Guat.* (Guatemala City, 1892), I, 612. *Arch. Dipl.*, 2° Sér., XXXVII (1891, I), 264. *Arb. Treaties* (Manning, 1924), 192.

Haiti–Costa Rica

No bipartite treaty of arbitration. See Sec. 4, this chap., *supra*.

Haiti–Cuba

No bipartite treaty of arbitration. See Sec. 12, this chap., *supra*.

Haiti–Dominican Republic

General treaty of 1929, including arbitration. See Sec. 19, this chap., *supra*.

Haiti–Guatemala

No bipartite treaty of arbitration. See Sec. 25, this chap., *supra*.

31. Haiti–Honduras

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

32. Haiti–Mexico

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

33. Haiti–Nicaragua

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

34. Haiti–Panama

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

35. Haiti–Salvador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933, and 1936 (three) described in Secs. 154, 160, 163, 164, 165, 169, 170, and 172, *infra*.

Honduras–Costa Rica

General treaty of 1895, including arbitration. See Sec. 5, this chap., *supra*.

Honduras–Cuba

No bipartite treaty of arbitration. See Sec. 13, this chap., *supra*.

Honduras–Dominican Republic

No bipartite treaty of arbitration. See Sec. 20, this chap., *supra*.

Honduras–Guatemala

General treaty of 1895, including arbitration. See Sec. 26, this chap., *supra*.

Honduras–Haiti

No bipartite treaty of arbitration. See Sec. 31, this chap., *supra*.

36. Honduras–Mexico

Treaty [35] of friendship, commerce, and navigation, providing (Article 1) for arbitration of any disagreement or conflict between them, except any question which involves an attack upon or offense against national dignity or integrity.

Signed at Mexico City, March 24, 1908; ratifications exchanged at Mexico City, September 30, 1910.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

37. Honduras–Nicaragua

Treaty [36] of peace, friendship, commerce, navigation, and extradition, providing (Article 50) for arbitration of any misunderstanding between them by any American government.

[35] *Trats. Vig. de Honduras* (Tegucigalpa, 1915), II, 83 *Diario Of.* (Mexico City, 1910), CX, 384. *Amer. J. Int. Law*, VI (1912), Supp., 192. *Arb. Treaties* (Manning, 1924), 403.

[36] *Col. de Trats. Int.* (Bonilla, Managua, 1909), 213. *Arb. Treaties* (Manning, 1924), 216.

Signed at Tegucigalpa, October 20, 1894; ratifications exchanged at San Salvador, December 24, 1896.

Both states have ratified the treaties of 1923 (four), 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 157, 158, 159, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

38. Honduras–Panama

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

39. Honduras–Salvador

Treaty [37] of peace, friendship, commerce, and extradition, providing (Article 47) for arbitration of any misunderstanding between them by any American government.

Signed at San Salvador, January 19, 1895; ratifications exchanged at San Salvador, January 20, 1896.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 155, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

Mexico–Costa Rica

No bipartite treaty of arbitration. See Sec. 6, this chap., *supra*.

Mexico–Cuba

No bipartite treaty of arbitration. See Sec. 14, this chap., *supra*.

Mexico–Dominican Republic

No bipartite treaty of arbitration. See Sec. 21, this chap., *supra*.

Mexico–Guatemala

No bipartite treaty of arbitration. See Sec. 27, this chap., *supra*.

Mexico–Haiti

No bipartite treaty of arbitration. See Sec. 32, this chap., *supra*.

[37] *La Gaceta* (Tegucigalpa, 1895), XIX, 362, 364. *Arb. Treaties* (Manning, 1924), 221.

Mexico–Honduras

General treaty of 1908, including arbitration. See Sec. 36, this chap., *supra*.

40. Mexico–Nicaragua

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

41. Mexico–Panama

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

42. Mexico–Salvador

Treaty [38] of friendship, commerce and navigation, providing (Article 1) for arbitration of any controversy or disagreement between them, whenever susceptible of such method of settlement.

Signed at Mexico City, April 24, 1893; ratifications exchanged at Mexico City, November 16, 1893.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

Nicaragua–Costa Rica

No bipartite treaty of arbitration. See Sec. 7, this chap., *supra*.

Nicaragua–Cuba

No bipartite treaty of arbitration. See Sec. 15, this chap., *supra*.

Nicaragua–Dominican Republic

No bipartite treaty of arbitration. See Sec. 22, this chap., *supra*.

Nicaragua–Guatemala

No bipartite treaty of arbitration. See Sec. 28, this chap., *supra*.

[38] *Trats. y Convs. Vig.* (Mexico, 1904), 247. 95 *British and Foreign State Papers* 1353. *Arb. Treaties* (Manning, 1924), 210.

Nicaragua–Haiti

No bipartite treaty of arbitration. See Sec. 33, this chap., *supra.*

Nicaragua–Honduras

General treaty of 1894, including arbitration. See Sec. 37, this chap., *supra.*

Nicaragua–Mexico

No bipartite treaty of arbitration. See Sec. 40, this chap., *supra.*

43. Nicaragua–Panama

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra.*

44. Nicaragua–Salvador

[Convention [39] of peace and reëstablishment of official relations, providing (Article 4) for arbitration of any disagreement between the nations.]

Signed at Amapala, January 13, 1886.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra.*

Panama–Costa Rica

No bipartite treaty of arbitration. See Sec. 8, this chap., *supra.*

Panama–Cuba

No bipartite treaty of arbitration. See Sec. 16, this chap., *supra.*

Panama–Dominican Republic

No bipartite treaty of arbitration. See Sec. 23, this chap., *supra.*

Panama–Guatemala

No bipartite treaty of arbitration. See Sec. 29, this chap., *supra.*

[39] *Col de Trats Int.* (Bonilla, Managua, 1909), 309. 77 *British and Foreign State Papers* 475. *Arb. Treaties* (Manning, 1924), 154.

Panama–Haiti

No bipartite treaty of arbitration. See Sec. 34, this chap., *supra*.

Panama–Honduras

No bipartite treaty of arbitration. See Sec. 38, this chap., *supra*.

Panama–Mexico

No bipartite treaty of arbitration. See Sec. 41, this chap., *supra*.

Panama–Nicaragua

No bipartite treaty of arbitration. See Sec. 43, this chap., *supra*.

45. Panama–Salvador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

Salvador–Costa Rica

General treaty of 1895, including arbitration. See Sec. 9, this chap., *supra*.

Salvador–Cuba

No bipartite treaty of arbitration. See Sec. 17, this chap., *supra*.

Salvador–Dominican Republic

Convention for arbitration of 1882. See Sec. 24, this chap., *supra*.

Salvador–Guatemala

No bipartite treaty of arbitration. See Sec. 30, this chap., *supra*.

Salvador–Haiti

No bipartite treaty of arbitration. See Sec. 35, this chap., *supra*.

Salvador–Honduras

General treaty of 1895, including arbitration. See Sec. 39, this chap., *supra*.

Salvador–Mexico

General treaty of 1893, including arbitration. See Sec. 42, this chap., *supra.*

Salvador–Nicaragua

No bipartite treaty of arbitration. See Sec. 44, this chap., *supra.*

Salvador–Panama

No bipartite treaty of arbitration. See Sec. 45, this chap., *supra.*

II. Central America with South America

46. Costa Rica–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra.*

47. Costa Rica–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra.*

48. Costa Rica–Brazil

Convention [40] for arbitration of differences not affecting the vital interests, independence, or honor of the parties and not concerning third parties, by the Permanent Court of Arbitration at The Hague or otherwise.

Signed at Washington, May 18, 1909; ratifications exchanged at Washington, August 10, 1911.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 (two) described in Secs. 160, 162, 165, 167, 169, and 171, *infra.*

49. Costa Rica–Chile

There appears to be no treaty of arbitration in existence between these countries.

[40] *Actos Dipl. do Brasil* (Rio de Janeiro, 1912), 369. *Arb. Treaties* (Manning, 1924), 438.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 (three) described in Secs. 160, 162, 165, 167, 169, 170, and 171, *infra*.

50. Costa Rica–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 (three) described in Secs. 160, 162, 165, 167, 169, 170, and 171, *infra*.

51. Costa Rica–Ecuador

Treaty [41] of friendship, commerce, and navigation, providing (Article 1) for arbitration of all questions between them (Article 2) by special agreement for the case.

Signed at Washington, April 19, 1890; ratified by Costa Rica, August 6, 1891; ratified by Ecuador, August 26, 1890.

Both states have ratified the treaties of 1923, 1933 (two), and 1936 (three) described in Secs. 160, 165, 167, 169, 170, and 171, *infra*.

52. Costa Rica–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1933, and 1936 described in Secs. 160, 162, 165, and 169, *infra*.

53. Costa Rica–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, and 1933 described in Secs. 160, 162, and 165, *infra*.

54. Costa Rica–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923 and 1933 described in Secs. 160 and 165, *infra*.

[41] *Col. de Trats. Int.* (San José, 1893), II, 405. *Arb. Treaties* (Manning, 1924), 191.

55. Costa Rica–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1933 (two), and 1936 described in Secs. 160, 162, 165, 167, and 169, *infra*.

56. Cuba–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

57. Cuba–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907 and 1933 described in Secs. 154 and 165, *infra*.

58. Cuba–Brazil

Convention [42] for arbitration of differences not affecting the vital interests, independence, or honor of the parties and not concerning third parties, by the Permanent Court of Arbitration at The Hague or otherwise.

Signed at Washington, June 10, 1909; ratifications exchanged at Habana, August 2, 1911.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 171, and 172, *infra*.

59. Cuba–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

[42] *Trats. Convs. y Convs. de Cuba* (Habana, 1916), 591. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., V (1912), 13. *Amer. J. Int. Law*, VII (1913), Supp., 167. *Arb. Treaties* (Manning, 1924), 439.

60. Cuba–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 162, 164, 165, 167, 169, 170, 171, and 172, *infra*.

61. Cuba–Ecuador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

62. Cuba–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929, 1933, and 1936 described in Secs. 154, 160, 162, 164, 165, and 169, *infra*.

63. Cuba–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), and 1933 described in Secs. 160, 162, 163, 164, and 165, *infra*.

64. Cuba–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929, and 1933 described in Secs. 160, 164, and 165, *infra*.

65. Cuba–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 described in Secs. 154, 160, 162, 163, 164, 165, 167, and 169, *infra*.

66. Dominican Republic–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

67. Dominican Republic–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902 and 1933 described in Secs. 150 and 165, *infra*.

68. Dominican Republic–Brazil

Convention [43] for arbitration of differences not affecting the vital interests, independence or honor of the parties and not concerning another state, by the Permanent Court of Arbitration at The Hague or otherwise.

Signed at Washington, April 29, 1910; ratifications exchanged at Washington, March 31, 1913.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (three) described in Secs. 160, 162, 163, 164, 165, 167, 169, 171, and 172, *infra*.

69. Dominican Republic–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

70. Dominican Republic–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 162, 164, 165, 167, 169, 170, 171, and 172, *infra*.

[43] *Trats. y Convs. Int. Vig.* (Ciudad Trujillo, 1937), I, 48. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., VIII (1915), 156. *Arb. Treaties* (Manning, 1924), 463.

71. Dominican Republic–Ecuador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

72. Dominican Republic–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933, and 1936 described in Secs. 160, 162, 164, 165, and 169, *infra*.

73. Dominican Republic–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1928, 1929 (two), and 1933 described in Secs. 150, 160, 162, 163, 164, and 165, *infra*.

74. Dominican Republic–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1929, and 1933 described in Secs. 150, 160, 164, and 165, *infra*.

75. Dominican Republic–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 described in Secs. 160, 162, 163, 164, 165, 167, and 169, *infra*.

76. Guatemala–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

77. Guatemala–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1907, and 1933 described in Secs. 150, 154, and 165, *infra*.

78. Guatemala–Brazil

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 171, and 172, *infra*.

79. Guatemala–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

80. Guatemala–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 162, 164, 165, 167, 169, 170, 171, and 172, *infra*.

81. Guatemala–Ecuador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

82. Guatemala–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929, 1933, and 1936 described in Secs. 154, 160, 162, 164, 165, and 169, *infra*.

83. Guatemala–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1928, 1929 (two), and 1933 described in Secs. 150, 160, 162, 163, 164, and 165, *infra*.

84. Guatemala–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1929, and 1933 described in Secs. 150, 160, 164, and 165, *infra*.

85. Guatemala–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 described in Secs. 154, 160, 162, 163, 164, 165, 167, and 169, *infra*.

86. Haiti–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

87. Haiti–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907 and 1933 described in Secs. 154 and 165, *infra*.

88. Haiti–Brazil

Convention [44] for arbitration of differences not affecting the vital interests, independence, or honor of the parties and not affecting the interests of third powers, by the Permanent Court of Arbitration at The Hague or otherwise.

[44] Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., VIII (1915), 153. *Arb. Treaties* (Manning, 1924), 462.

Signed at Washington, April 25, 1910; ratifications exchanged at Washington, November 21, 1912.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (two) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, and 172, *infra*.

89. Haiti–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933, and 1936 (three) described in Secs. 160, 162, 163, 164, 165, 169, 170, and 172, *infra*.

90. Haiti–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933, and 1936 (three) described in Secs. 160, 162, 164, 165, 169, 170, and 172.

91. Haiti–Ecuador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933, and 1936 (three) described in Secs. 154, 160, 163, 164, 165, 169, 170, and 172, *infra*.

92. Haiti–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929, 1933, and 1936 described in Secs. 154, 160, 162, 164, 165, and 169, *infra*.

93. Haiti–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), and 1933 described in Secs. 160, 162, 163, 164, and 165, *infra*.

94. Haiti–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929, and 1933 described in Secs. 160, 164, and 165, *infra*.

95. Haiti–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933, and 1936 described in Secs. 154, 160, 162, 163, 164, 165, and 169, *infra*.

96. Honduras–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

97. Honduras–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

98. Honduras–Brazil

Convention [45] for arbitration of differences not affecting the vital interests, independence or honor of the parties and not affecting the interests of third parties, by the Permanent Court of Arbitration at The Hague or otherwise.

Signed at Guatemala City, April 26, 1909; ratifications exchanged at Guatemala City, April 24, 1914.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (three) described in Secs. 160, 162, 163, 164, 165, 167, 169, 171, and 172, *infra*.

[45] *Trats. Vig. de Honduras* (Tegucigalpa, 1915), II, 139. *Arb. Treaties* (Manning, 1924), 431.

99. Honduras–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

100. Honduras–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 162, 164, 165, 167, 169, 170, 171, and 172, *infra*.

101. Honduras–Ecuador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

102. Honduras–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933, and 1936 described in Secs. 160, 162, 164, 165, and 169, *infra*.

103. Honduras–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), and 1933 described in Secs. 160, 162, 163, 164, and 165, *infra*.

104. Honduras–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929, and 1933 described in Secs. 160, 164, and 165, *infra*.

105. Honduras–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 described in Secs. 160, 162, 163, 164, 165, 167, and 169, *infra*.

106. Mexico–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

107. Mexico–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1907, and 1933 described in Secs. 150, 154, and 165, *infra*.

108. Mexico–Brazil

Convention [46] for arbitration of differences not affecting the vital interests, independence, or honor of the parties and not concerning the interests of another state, by the Permanent Court of Arbitration at The Hague or otherwise.

Signed at Petropolis, April 11, 1909; ratifications exchanged at Mexico City, December 26, 1911.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 171, and 172, *infra*.

109. Mexico–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

[46] *Trats. y Convs. Vig.* (Mexico City, 1930), I, 87. Martens, *Nouv. Rev. Gén. de Traités*, 3e Sér., VI (1913), 347. *Arb. Treaties* (Manning, 1924), 428.

110. Mexico–Colombia

Treaty [47] for arbitration (Article 1) of all differences between them except (1) those which may affect the independence or sovereignty of either nation or their procedure in matters of internal order, (2) those which concern facts or deeds directly authorized by the constitution of the respective state, and (3) those which affect the interest or refer to the action of a third state, (Article 3) by a tribunal of three members, (Article 4) with an agreement for each case.

Signed at Mexico City, July 11, 1928; ratifications exchanged at Mexico City, July 1, 1937.

Both states have ratified the treaties of 1923, 1928, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 162, 164, 165, 167, 169, 170, 171, and 172, *infra*.

111. Mexico–Ecuador

Treaty [48] of friendship, commerce, and navigation, agreeing to negotiate a treaty (Article 10) for arbitration of questions arising between them on this treaty or on any point referring to their political or commercial relations.

Signed at Washington, July 10, 1888; ratifications exchanged November 26, 1890.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

112. Mexico–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929, 1933, and 1936 described in Secs. 154, 160, 162, 164, 165, and 169, *infra*.

113. Mexico–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1928, 1929 (two), and 1933 described in Secs. 150, 160, 162, 163, 164, and 165, *infra*.

[47] *Trats. y Convs. Vig.* (Mexico City, 1938), VI, 39.

[48] *Trats. y Convs. Vig.* (Mexico City, 1930), I, 107. *Anuario de Leg.* (Mexico City, 1890), VII, 888. 79 *British and Foreign State Papers* 144. *Arb. Treaties* (Manning, 1924), 179. (Article 1 modified by convention signed at Mexico City, May 4, 1934; ratifications exchanged at Mexico City, July 7, 1937. *Trats. y Convs. Vig.* (Mexico City, 1938), VI, 65).

114. Mexico–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1929, and 1933 described in Secs. 150, 160, 164, and 165, *infra*.

115. Mexico–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 described in Secs. 154, 160, 162, 163, 164, 165, 167, and 169, *infra*.

116. Nicaragua–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

117. Nicaragua–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907 and 1933 described in Secs. 154 and 165, *infra*.

118. Nicaragua–Brazil

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 171, and 172, *infra*.

119. Nicaragua–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

120. Nicaragua–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 162, 164, 165, 167, 169, 170, 171, and 172, *infra*.

121. Nicaragua–Ecuador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

122. Nicaragua–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929, 1933, and 1936 described in Secs. 154, 160, 162, 164, 165, and 169, *infra*.

123. Nicaragua–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), and 1933 described in Secs. 160, 162, 163, 164, and 165, *infra*.

124. Nicaragua–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929, and 1933 described in Secs. 160, 164, and 165, *infra*.

125. Nicaragua–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 described in Secs. 154, 160, 162, 163, 164, 165, 167, and 169, *infra*.

126. Panama–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

127. Panama–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907 and 1933 described in Secs. 154 and 165, *infra*.

128. Panama–Brazil

[Convention [49] for arbitration of differences not affecting the vital interests, independence, or honor of the parties and not touching the interests of third parties, by the Permanent Court of Arbitration at The Hague or otherwise.]

Signed at Washington, May 1, 1909; approved by Brazilian Congress, December 31, 1910 (Decr. 2396); sanctioned by Brazilian executive, March 2, 1911 (*Rel. pelo Min. das Rels. Ext., 1912–13* (Rio de Janeiro, 1913), 68; *ibid.*, 1913–14 (Rio de Janeiro, 1914), (62); ratified by Panama, January 15, 1915 (Ley 12); ratifications apparently not exchanged (not in *Actos Int. Vigentes no Brasil* (Rio de Janeiro, 1927), 208; *ibid.*, 2ª ed. (Rio de Janeiro, 1937), II, 33).

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 (three) described in Secs. 154, 160, 162, 163, 164, 165, 167, 169, 171, and 172, *infra*.

129. Panama–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 162, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

130. Panama–Colombia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 162, 164, 165, 167, 169, 170, 171, and 172, *infra*.

[49] *Coll. das Leis do Brazil, 1910* (Rio de Janeiro, 1913), I, 310. *Leyes de Panama, 1914–1915* (Panama City, 1915), 127.

131. Panama–Ecuador

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

132. Panama–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929, 1933, and 1936 described in Secs. 154, 160, 162, 164, 165, and 169, *infra*.

133. Panama–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1928, 1929 (two), and 1933 described in Secs. 160, 162, 163, 164, and 165, *infra*.

134. Panama–Uruguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929, and 1933 described in Secs. 160, 164, and 165, *infra*.

135. Panama–Venezuela

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1928, 1929 (two), 1933 (two), and 1936 described in Secs. 154, 160, 162, 163, 164, 165, 167, and 169, *infra*.

136. Salvador–Argentina

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaty of 1933 described in Sec. 165, *infra*.

137. Salvador–Bolivia

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1907, and 1933 described in Secs. 150, 154, and 165, *infra*.

138. Salvador–Brazil

Convention [50] for arbitration of differences not affecting the vital interests, independence or honor of the parties or the interests of a third state, by the Permanent Court of Arbitration at The Hague or otherwise.

Signed at San Salvador, September 3, 1909; ratifications exchanged at Washington, November 12, 1913.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

139. Salvador–Chile

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

140. Salvador–Colombia

Convention [51] for obligatory arbitration of controversies and difficulties of every sort between them, by special agreement for the case.

Signed at Paris, December 24, 1880; ratifications exchanged at Paris, January 7, 1882.

Both states have ratified the treaties of 1923, 1929, 1933 (two), and 1936 (four) described in Secs. 160, 164, 165, 167, 169, 170, 171, and 172, *infra*.

141. Salvador–Ecuador

Treaty [52] of friendship, commerce, and navigation, providing for arbitration of all questions between them of whatsoever nature, by special agreement for the case.

[50] *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 436. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., VIII (1915), 341. *Arb. Treaties* (Manning, 1924), 446.

[51] Martens, *Nouv. Rec. Gen. de Traités*, 2e Sér., XIV (1889), 206. *Arb. Treaties* (Manning, 1924), 118.

[52] *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 147. 82 *British and Foreign State Papers* 686. *Arb. Treaties* (Manning, 1924), 190.

Signed at Washington, March 29, 1890; ratifications exchanged at San Salvador, May 15, 1891.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 (four) described in Secs. 154, 160, 163, 164, 165, 167, 169, 170, 171, and 172, *infra*.

142. Salvador–Paraguay

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1907, 1923, 1929, 1933, and 1936 described in Secs. 154, 160, 164, 165, and 169, *infra*.

143. Salvador–Peru

There appears to be no treaty of arbitration in existence between these countries.

Both states have ratified the treaties of 1902, 1923, 1929 (two), and 1933 described in Secs. 150, 160, 163, 164, and 165, *infra*.

144. Salvador–Uruguay

[Convention [53] for obligatory arbitration of controversies and difficulties of every sort between them, by special agreement for the case.]

Signed at Paris, February 7, 1883.

Treaty [54] for obligatory arbitration of all controversies of whatever nature, except to reopen questions settled by previous arrangements or decisions, between the parties, by special agreement for each case.

Signed at Madrid, November 7, 1924; ratifications exchanged at Madrid, April 25, 1928.

Both states have ratified the treaties of 1902, 1923, 1929, and 1933 described in Secs. 150, 160, 164, and 165, *infra*.

145. Salvador–Venezuela

Treaty [55] of friendship, commerce, and navigation, providing (Article 42) for arbitration of all differences between them.

[53] *Col. de Trats. del Salvador* (San Salvador, 1884), 318. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 214. *Arb. Treaties* (Manning, 1924), 131.

[54] *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 587.

[55] *Col. de Trats. del Salvador* (San Salvador, 1884), 320. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 87. 74. *British and Foreign State Papers* 298. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XIV (1889), 215. *Arb. Treaties* (Manning, 1924), 133.

Signed at Caracas, August 27, 1883; ratifications exchanged at Caracas, December 11, 1884.

Both states have ratified the treaties of 1907, 1923, 1929 (two), 1933 (two), and 1936 described in Secs. 154, 160, 163, 164, 165, 167, and 169, *infra*.

C. Multipartite Treaties

146. First International Conference of American States

[Treaty [56] of arbitration, by special tribunal for each case, obligatory for all questions except those which in the judgment of any nation involved may imperil its independence, in which case it is optional for that nation but obligatory for its adversary, to remain in force for twenty years, ratifications to be exchanged in Washington before May 1, 1891, extended for two years.]

Adopted at Washington, April 28, 1890, by delegates of Costa Rica, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Salvador, Argentina, Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, Venezuela, and the United States, being all of the nineteen American republics (before Cuba and Panama) except the Dominican Republic, Chile, and Uruguay, who abstained; signed at Washington, April 28, 1890, by Guatemala, Haiti, Honduras, Nicaragua, Salvador, Bolivia, Brazil, Ecuador, Venezuela, and the United States; never exchanged.

147. Honduras, Nicaragua, and Salvador

[Treaty [57] of peace and arbitration, by Central American Diet, of questions submitted to it when peaceful mediation has failed; ratifications to be notified to Salvador.]

Signed at San Salvador, May 23, 1892, by Guatemala, Honduras, Nicaragua, and Salvador; ratified by last three; submitted to Costa Rica for adhesion, not given.

148. Greater Republic of Central America

[Convention [58] by Honduras, Nicaragua, and Salvador signed at Amapala, June 20, 1895, with arbitration by Diet of all questions which may arise. Treaty of union of these three as the Greater Republic with Costa Rica and Guatemala

[56] *Minutes of the Int. Amer. Conf.* (Washington, 1890). *Reports of Committees* (Eng. Ed., Washington, 1890), II, 1078. *Actos Dipl. do Brasil* (Rio de Janeiro, 1912), II, 170. *Trats. Pub. de Venezuela* (Caracas, 1924), I, 451. S. Ex. Doc. 224, XII, Ser. 2689, 51st Cong., 1st Sess. (Washington, Sept. 3, 1890).

[57] *Col. de Trats. de Guatemala* (Guatemala City, 1892), I, 488. *Der. de Gentes Positivo Nicaragüense* (Managua, 1922), II, 185. *U. S. For. Rel.*, 1894, p. 437. *Arb. Treaties* (Manning, New York, 1924), 198.

[58] 92 *British and Foreign State Papers* 227, 234. *U. S. For. Rel.*, 1896, pp. 367–371, 389–395, 456–465. *Arb. Treaties* (Manning, New York, 1924), 234.

signed at Guatemala City, June 15, 1897, not ratified by any signatory; constitution of the United States of Central America by first three at Managua, August 27, 1898; all ended by Salvador's defection, November 29, 1898.]

149. Costa Rica, Honduras, Nicaragua, and Salvador

[Treaty [59] of peace and arbitration by tribunal of Central American arbiters, obligatory for all questions which might present themselves; if ratified by all, in force without exchange.]

Signed at Corinto, January 20, 1902; adhesion of Guatemala invited, not given.

150. Second International Conference of American States

Treaty [60] of arbitration, by Hague Permanent Court of Arbitration, obligatory for all questions except those which in the exclusive judgment of any nation interested affect the national independence or honor (boundary disputes not to be so considered), in force when three signatories notify Mexico; denunciation to affect only nation denouncing and after one year.

Signed at Mexico City, January 29, 1902, by five South American republics and

	Ratified	Notified
Dominican Republic	Sept. 30, 1904	Dec. 16, 1904
Guatemala	Aug. 25, 1902	
Mexico	Apr. 17, 1903	Apr. 22, 1903
Salvador	Apr. 23, 1902	May 28, 1902

Proclaimed by Mexico, April 22, 1903.

151. Guatemala, Honduras, Nicaragua, and Salvador

[Treaty [61] of nonintervention and arbitration obligatory for questions arising, in accordance with principles of Pan American treaty of January 29, 1902; if ratified by all, in force without exchange.]

Signed at San Salvador, November 2, 1903; acceptance of Costa Rica invited, not given.

[59] Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXI (1905), 243. *U. S. For. Rel.*, 1902, pp. 881–883. *Arb. Treaties* (Manning, New York, 1924), 303.

[60] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 46, p. 308. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 43. *Trats. y Conv. Vigs.* (Mexico City, 1904), 479; (1909), II, 373; (1931), II, 25. *Trats. Convs. y Ac. Vig.* (San Salvador, 1928), I, 205. *Arb. Treaties* (Manning, New York, 1924), 307. 95 *British and Foreign State Papers* 1009. Martens, *Nouv. Rec. Gén. de Traités*, 2e Sér., XXXI (1905), 253; *ibid.*, 3e Sér., VI (1913), 149. *Rec. des Cours* (1930, III), XXXIII, 397.

[61] *Trats. Vig. de Honduras* (Tegucigalpa, 1905), 167. *U. S. For. Rel.*, 1904, p. 351. *Arb. Treaties* (Manning, New York, 1924), 346.

152. Third International Conference of American States

Resolution [62] ratifying adherence to the principle of arbitration and recommending to the nations at the conference that their delegates to the Second Peace Conference at The Hague be instructed to endeavor to secure a world-wide general arbitration convention.

Signed at Rio de Janeiro, August 7, 1906, by nine South American republics and Costa Rica, Cuba, Dominican Republic, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Salvador. (Haiti was not represented at the conference.)

153. Costa Rica, Guatemala, Honduras, and Salvador

[Treaty [63] of peace and arbitration, by the presidents of the United States and Mexico, of all particular difficulties, according to the Pan American treaty of January 29, 1902, until other rules are agreed upon.]

Signed at San José, September 25, 1906, by Costa Rica, Guatemala, Honduras, and Salvador; ratified by Guatemala, April 18, 1907.

154. Second Hague Peace Conference

Convention [64] for the pacific settlement of international disputes by good offices, mediation, inquiry commissions, and arbitration in questions of a juridical nature, with general or special agreements, and creation of the Permanent Court of Arbitration; ratifications to be deposited at The Hague; denunciation to affect only nation denouncing and after one year.

Signed (No. 1) at The Hague, October 18, 1907 (in force January 25, 1908), by thirty nations, including the ten South American republics, and

	Ratified	Deposited
Cuba		Feb. 22, 1912
Dominican Republic	(Signed only)	
Guatemala		Mar. 15, 1911
Haiti		Feb. 2, 1910
Mexico	Jan. 15, 1910	Nov. 27, 1909
Nicaragua	Adhered, Dec. 16, 1909	

[62] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 47, p. 308. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., VI (1913), 230.

[63] *Mem. de Rels. Ext.* (Guatemala City, 1907), 160. *Arb. Treaties* (Manning, New York, 1924), 364.

[64] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 48, p. 309. 36 Stat. L. II, 2199. *U. S. Treaty Series*, No. 536. *Treaties of the U. S.* (Malloy, 1910), II, 2220. *Trats. de Cuba* (Habana, 1916), 595. *Trats. y Conv. Vig.* (Mexico City, 1931), II, 81, 201. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 281. 100 *British and Foreign State Papers* 298. *U. S. For. Rel.*, 1907, II, 1181. *Amer. J. Int. Law*, II (1908), Supp., 43. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., III (1910), 360. *Arb. Treaties* (Manning, New York, 1924), 368.

	Ratified	Deposited
Panama		Sept. 11, 1911
Salvador	May 7, 1908	Nov. 27, 1909
United States	Feb. 23, 1909 with a reservation	Nov. 27, 1909

(Costa Rica, Honduras, and Nicaragua were not represented at the conference.)

155. Central American Peace Conference

Treaty [65] of peace and amity, with arbitration, by Central American Court of Justice, for every difference or difficulty. (Court ended, March 12, 1918.)

Signed at Washington, December 20, 1907, by,

	Ratified	Denounced
Costa Rica	Feb. 28, 1908	
Guatemala	Mar. 12, 1908	
Honduras	Mar. 4, 1908	
Nicaragua	Feb. 14, 1908	1920
Salvador	Mar. 2, 1908	

156. Federal Republic of Central America

[Treaty [66] of union, with probable federal control of relations between the member states, and of foreign relations; valid when three ratify.]

Signed at San José, January 19, 1921, by:

	Ratified	Withdrew
Costa Rica	(Signed only)	
Guatemala	May 12, 1921	Jan. 14, 1922
Honduras	Apr. 11, 1921	
Salvador	Apr. 15, 1921	Feb. 4, 1922

(Nicaragua was not represented at the conference.)

157. Central America

Treaty [67] of peace and amity, with agreement not to recognize any government which may come into power in any of the five republics through a *coup d'état*

[65] See Chap. I, Secs. 1, 9, 13, *supra*. *Col. de Trats. de Guatemala* (Guatemala City, 1919), III, 404. *Trats. Vig de Honduras* (Tegucigalpa, 1913), I, 7. *Convs. Int. de Nicaragua* (Managua, 1913), 135. *Pactos Int. de El Salvador* (San Salvador, 1910), I, 76. *U. S. For. Rel.*, 1907, II, 665–727; 1917, pp. 29–45; 1920, I, 168–179. *Treaties of the U. S.* (Malloy, 1910), II, 2392. 100 *British and Foreign State Papers* 835. *Arb. Treaties* (Manning, New York, 1924), 394

[66] See Chap. I, Sec. 4, *supra*. *League of Nations Treaty Series*, No. 113, V, 10. 114 *British and Foreign State Papers* 831. *League of Nations Treaty Series*, XI, 392. 116 *British and Foreign State Papers* 777. *Recop. de las Leyes de Guatemala*, 1921–22 (Guatemala City, 1926), XL, 166, 168, 177, 590.

[67] *Col. de Trats. de Costa Rica* (San José, 1927), 347. 130 *British and Foreign State Papers* 517. *Amer. J. Int. Law*, XVII (1923), Supp., 117. *Rec. des Cours* (1929, V), XXX, 338.

or a revolution, and not to intervene in internal political affairs of each other; in force until January 1, 1934, and until one year after notification of denunciation by any country, then ceasing as to that country only, until parties are not less than three; exchange of ratifications to be through notice to Costa Rica.

Signed at Washington, February 7, 1923, by:

	Ratified	Denounced
Costa Rica	Nov. 24, 1924	Dec. 23, 1932
Guatemala	May 24, 1924	
Honduras	Mar. 2, 1925	
Nicaragua	Mar. 15, 1923	
Salvador	Apr. 30, 1925 (with reservations)	Dec. 26, 1932

158. Central America

Convention [68] for establishment of an international Central American tribunal, of three arbitrators chosen for each case from a permanent list of thirty jurists, for all controversies or questions except those which affect the sovereign and independent existence of any of the signatory republics; in force until January 1, 1934, and until one year after notification of denunciation by any country, then ceasing as to that country only, until parties are not less than three; exchange of ratifications to be through notice to Costa Rica.

Signed at Washington, February 7, 1923, by:

	Ratified
Costa Rica	Nov. 24, 1924
Guatemala	May 19, 1925
Honduras	Mar. 10, 1925
Nicaragua	Mar. 15, 1925
Salvador	(Signed only)

159. Central America and the United States

Convention [69] for (Article 1) the establishment of international commissions of inquiry, from a list of permanent commissioners, for controversies regarding questions of fact relative to provisions of existing treaties which affect neither the

[68] *Col. de Trats. de Costa Rica* (San José, 1927), 352. 130 *British and Foreign State Papers* 504. *Amer. J. Int. Law*, XVII (1923), Supp., 83; XXVI (1932), 783. Panel of Jurists. *U. S. Tr. Inf. Bull.*, Dec. 1930, No. 15, 1. *Amer. J. Int. Law*, XX (1926), 142.

[69] 44 Stat. L. III, 2070. *U. S. Treaty Series*, No. 717. *Treaties of the U. S.* (Malloy, 1938), IV, 4677. *Col. de Trats. de Costa Rica* (San José, 1927), 379. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 561. 120 *British and Foreign State Papers* 146. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XIV (1926), 442. *Amer. J. Int. Law*, XVII (1923), Supp., 108. Denunciations. *U. S. Tr. Inf. Bull.*, Dec. 1932, No. 39, 4.

sovereign and independent existence of any of the signatory republics, nor their honor or vital interests, (Article 16) ratifications to be deposited with the United States; to be in force for ten years, and thereafter for twelve months after notification of denunciation by any country, then ceasing as to that country only, until parties are down to three; to unify the separate conventions by the United States with each of the other five concluded in 1913–14.

Signed at Washington, February 7, 1923, by:

	Ratified	Deposited	Denounced
Costa Rica	Nov. 24, 1924	June 13, 1925	Dec. 23, 1922
Guatemala	May 24, 1924	June 13, 1925	
Honduras	Feb. 2, 1925	June 13, 1925	
Nicaragua	Mar. 15, 1923	June 13, 1925	
Salvador	Mar. 22, 1924	June 13, 1925	Dec. 26, 1932
United States	Apr. 7, 1925	June 13, 1925	

160. Fifth International Conference of American States

Treaty (Gondra)[70] to avoid or prevent conflicts between the American states; all controversies for any cause whatsoever to be submitted to a commission of inquiry of five American members; ratifications to be deposited with Chile; to be in force indefinitely, and for one year after notification of denunciation by any country, then ceasing as to that country only.

Signed at Santiago de Chile, May 3, 1923, by eight South American republics and:

	Ratified	Deposited
Costa Rica	Adhered,	Nov. 23, 1928
Cuba	Aug. 2, 1924	Jan. 17, 1925
Dominican Republic	Nov. 27, 1928	Feb. 22, 1929
Guatemala		Oct. 5, 1928
Haiti		Aug. 19, 1926
Honduras	Mar. 27, 1931	Apr. 30, 1931
Mexico	Adhered, Sept. 29, 1927	Dec. 26, 1927
Nicaragua	Jan. 10, 1931	Jan. 11, 1933
Panama	Mar. 19, 1928	May 23, 1928
Salvador	Adhered, July 20, 1928	Sept. 12, 1928
	Denounced, Dec. 28, 1932	
United States	Apr. 21, 1924	May 30, 1924

[70] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 50, p. 310. *League of Nations Treaty Series*, No. 831, XXXIII, 26; XXXIX, 220; LIV, 399; LXIX, 80; LXXXVIII, 323. 44 Stat. L. III, 2527. *U. S. Treaty Series*, No. 752. *Treaties of the U. S.* (Malloy, 1938), IV, 4691. *Trats. . . . de Cuba desde 1916* (Habana, 1925), 117. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 90. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 757. *Trats. y Conv. Vig.* (Mexico City, 1931), II, 465. 122 *British and Foreign State Papers* 53. *Amer. J. Int. Law*, XXI (1927), Supp., 107. *Rev. de Der. Int.* (Habana, 1924), V, 108.

161. Sixth International Conference of American States

Resolution [71] declaring that the American republics adopt obligatory arbitration as the means to be employed for the pacific solution of their international differences; and that they should meet at Washington within one year in a conference of conciliation and arbitration.

Adopted at Havana, February 18, 1928, and signed, February 20, 1928, by ten South American republics and Costa Rica, Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Salvador, and the United States.

162. Briand–Kellogg Pact

Treaty [72] for the renunciation of war as an instrument of national policy except in self-defense; the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin never to be sought except by pacific means; ratifications to be deposited with the United States.

Signed at Paris, August 27, 1928 (in force, July 24, 1929), by the United States and fourteen other countries, and signed or adhered to by six South American republics and:

		Adhered	Deposited
Costa Rica			Oct. 1, 1929
Cuba			Mar. 13, 1929
Dominican Republic		Oct. 19, 1928	Dec. 12, 1928
Guatemala			July 16, 1929
Haiti			Mar. 10, 1930
Honduras			Aug. 5, 1929
Mexico		Nov. 1, 1929	Nov. 26, 1929
Nicaragua			May 13, 1929
Panama		Dec. 19, 1928	Feb. 25, 1929
United States	(Ratified)	Jan. 17, 1929	Mar. 2, 1929

163. Conference on (Conciliation and) Arbitration

Treaty [73] of general inter-American arbitration of all differences juridical in their nature, except controversies within the domestic jurisdiction of any of the

[71] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 51, p. 311. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 765. *Rev. de Der. Int.* (Habana, 1928), XIII, 159. *For. Aff.*, VII (1929), 284.

[72] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 52, p. 311. *League of Nations Treaty Series*, No. 2137, LXXXIX, 374; XCIV, 58. 46 Stat. L. 11, 2343. *U. S. Treaty Series*, No. 796. *Treaties of the U. S.* (Malloy, 1938), IV, 5130. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 97. *Trats. y Convs. Vig.* (Mexico City, 1931), III, 157. 128 *British and Foreign State Papers* 447. Martens, *Nouv. Rec. Gén. de Traités*, 3e Sér., XXI (1929), 3. *Amer. J. Int. Law*, XXII (1928), 253; XXII, Supp., 171. *British Year Book of Int. Law*, X (1929), 208.

[73] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 53, p. 312. *League of*

parties and not controlled by international law; by an arbiter or a court of five American members; ratifications to be deposited with the United States; to be in force indefinitely, and for one year after notification of denunciation by any country, then ceasing as to that country only.

Signed at Washington, January 5, 1929 (in force, October 28, 1929), by nine South American republics and:

	Ratified	Deposited
Costa Rica	(Signed only)	
With reservations		
Cuba	Oct. 9, 1930	Nov. 8, 1930
Dominican Republic	May 27, 1929	Sept. 17, 1929
Signed with an understanding		
Guatemala	Sept. 9, 1929	Oct. 28, 1929
Signed with reservations		
Haiti	Mar. 8, 1933	Apr. 4, 1933
Honduras	Nov. 30, 1936	Feb. 9, 1937
Signed with a reservation		
Mexico	Nov. 8, 1929	Jan. 6, 1930
Signed with a reservation		
Nicaragua	July 9, 1930	June 15, 1932
Panama	Dec. 30, 1932	Jan. 20, 1933
Salvador	Oct. 30, 1929	Nov. 28, 1929
Signed with reservations		
United States	Apr. 16, 1935 with an understanding	Apr. 16, 1935

164. Conference on Conciliation (and Arbitration)

Convention [74] of general inter-American conciliation, to maintain the achievement of the (Gondra) treaty of May 3, 1923, by giving additional prestige and strength to the action of the commissions established by it; ratifications to be deposited with Chile; in force indefinitely, and for one year after notification of denunciation by any country, then ceasing as to that country only.

Nations Treaty Series, No. 2988, CXXX, 136. 49 Stat. L. II, 3153. *U. S. Treaty Series*, No. 886. *Treaties of the U. S.* (Malloy, 1938), IV, 4756. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 101. *Trats. y Convs. Vig.* (Mexico City, 1931), II, 165. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 774. 135 *British and Foreign State Papers* 813. *Amer. J. Int. Law*, XXII (1928), 642; XXIII (1929), 143, 273; XXIII, Supp., 82. *Rev. de Der. Int.*, XIV (Habana, 1928), 330; XV (1929), 102; XVI (1930), 85; XXI (1932), 327. *British Year Book of Int. Law*, X (1929), 14.

[74] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 54, p. 313. *League of Nations Treaty Series*, No. 2309, C, 400. 46 Stat. L. II, 2209. *U. S. Treaty Series*, No. 780. *Treaties of the U. S.* (Malloy, 1938), IV, 4763. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 111. *Trats. y Convs. Vig.* (Mexico City, 1931), III, 161. *Trats. Convs. y Ac. Int. Vig.* (San Salvador, 1938), I, 768. 131 *British and Foreign State Papers* 131. *Amer. J. Int. Law*, XXIII (1929), Supp., 76.

Signed at Washington, January 5, 1929 (in force, November 15, 1929), by nine South American republics and:

	Ratified	Deposited
Costa Rica	(Signed only)	
Cuba	Apr. 19, 1930	Aug. 7, 1930
Dominican Republic	Oct. 17, 1932	Dec. 9, 1932
Signed *ad referendum*		
Guatemala		Nov. 15, 1929
Haiti		Apr. 18, 1933
Honduras	Feb. 14, 1935 (Decr. No. 82)	Jan. 21, 1937
Mexico	Nov. 8, 1929	Jan. 9, 1930
Nicaragua	Apr. 22, 1930	Jan. 11, 1933
Panama		Feb. 20, 1933
Salvador	July 6, 1929	Dec. 28, 1929
United States	Feb. 26, 1929	Mar. 27, 1929

165. South American Anti-War Pact

Treaty (Saavedra Lamas)[75] condemning wars of aggression, declaring that solution of conflicts or differences of whatever class ought to be obtained only by pacific means and that the parties will not recognize any territorial arrangement whatever which has not been procured by pacific means; conflicts to be submitted to conciliation by a commission of five members; ratifications to be deposited with Argentina; to be in force indefinitely, and for one year after notification of denunciation by any country, then ceasing as to that country only.

Signed at Rio de Janeiro, October 10, 1933 (in force, October 14, 1935), by five South American republics and:

	Adherence ratified	Deposited
Costa Rica		Apr. 27, 1934
Cuba	Apr. 28, 1934	Jan. 21, 1935
Dominican Republic	July 18, 1934	Sept. 17, 1934
Guatemala	Mar. 24, 1936	Aug. 11, 1936
Haiti	May 13, 1936	July 10, 1936
Honduras	Jan. 19, 1935	Apr. 27, 1934
Decr. Num. 39	with reservations	
Mexico	Dec. 24, 1935	Feb. 17, 1936
Signed Oct. 10, 1933		

[75] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 55, p. 313. *League of Nations Treaty Series*, No. 3781, CLXIII, 394; *Official Journal*, 1934, 15th Year, 133, 208. 49 Stat. L. II, 3363. *U. S. Treaty Series*, No. 906. *Treaties of the U. S.* (Malloy, 1938), IV, 4793. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 121. *Trats. y Convs. Vig.* (Mexico City, 1938), IV, 199. *Amer. J. Int. Law*, XXVIII (1934), Supp., 79. *Rev. de Der. Int.* (Habana, 1933), XXIII, 283.

	Adherence ratified	Deposited
Nicaragua	Feb. 15, 1935	Aug. 13, 1935
Panama		Nov. 12, 1936
Salvador	July 30, 1935	Sept. 20, 1935
United States	June 27, 1934 with a reservation	Aug. 10, 1934

166. Seventh International Conference of American States

Resolution [76] inviting countries to adhere to and ratify five peace instruments: the Gondra Treaty of May 3, 1923 (Sec. 160, *supra*), the Briand-Kellogg Treaty of August 27, 1928 (Sec. 162, *supra*), the Arbitration Treaty of January 5, 1929 (Sec. 163, *supra*), the Conciliation Treaty of January 5, 1929 (Sec. 164, *supra*), and the Saavedra Lamas Treaty of October 10, 1933 (Sec. 165, *supra*).

Signed at Montevideo, December 16, 1933, by ten South American republics and by Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Salvador, and the United States. (Costa Rica was not represented at the conference.)

167. Seventh International Conference of American States

Convention [77] concerning the rights and duties of states reciting (Article 8) that no state has the right to intervene in the internal or external affairs of another and (Article 11) establishing as a rule of conduct the precise obligation not to recognize territorial acquisitions obtained by force; (Article 13) ratifications to be deposited with the Pan American Union in Washington; (Article 15) to be in force indefinitely, and for one year after notification of denunciation to the Pan American Union by any country, then ceasing as to that country only.

Signed at Montevideo, December 26, 1933 (in force, December 26, 1934), by ten South American republics and:

	Ratified	Deposited
Costa Rica	Adhered,	Sept. 28, 1937
Cuba		Apr. 28, 1936
Dominican Republic	Nov. 15, 1934 Law No. 782	Dec. 26, 1934

[76] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 56, p. 314. *U. S. Tr. Inf. Bull.*, Jan. 1934, No. 52, 2. *Rev. de Der. Int.* (Habana, 1934), XXV, 9. *Amer. J. Int. Law*, XXVIII (1934), 316.

[77] *League of Nations Treaty Series*, No. 3802, CLXV, 20. 49 Stat. L. II, 3097. *U. S. Treaty Series*, No. 881. *Treaties of the U. S.* (Malloy, 1938), IV, 4807. *Trats. y Convs. de la Rep. Dom* (Ciudad Trujillo, 1937), I, 257. *Trats. y Convs. Vig.* (Mexico City, 1938), IV, 185. *Rev. de Der. Int.* (Habana, 1934), XXV, 115. *Amer. J. Int. Law*, XXVIII (1934), 226; XXVIII, Supp., 75.

	Ratified	Deposited
Guatemala		June 12, 1935
Haiti	(Signed only)	
Honduras	Feb. 16, 1935	Dec. 1, 1937
Decr. Num. 86		
Mexico	Oct. 1, 1935	Jan. 27, 1936
Nicaragua	July 10, 1935	Jan. 8, 1937
Panama	Sept. 27, 1938	Dec. 13, 1938
Law No. 6		
Salvador		Jan. 9, 1937
United States	June 29, 1934 with a reservation	July 13, 1934

168. First Central American Conference

[Treaty [78] of peace and fraternity, (Article 4) reciting principle of nonintervention in each others' internal affairs and (Article 5) conflicts to be settled only and exclusively by means of arbitration, without exception; (Article 18) treaty to be carried out if accepted by three republics; (Article 19) ratifications to be deposited with Guatemala; (Article 20) treaty to be of indefinite duration, and in force for one year after notification of denunciation, then ceasing as to that country only, until others be less than three; (Article 21) treaties or conventions signed in Washington, February 7, 1923, to remain in force among Central American states which ratified and have not denounced them, as to all provisions not opposed to or modified by present treaty.]

Signed at Guatemala City, April 12, 1934, by delegates representing Costa Rica, Guatemala, Honduras (signed with a reservation), Nicaragua, and Salvador, but not ratified by any of the five republics.

169. Inter-American Conference for the Maintenance of Peace

Convention [79] for consultation and coöperation if peace is menaced; ratifications to be deposited with Argentina; in effect indefinitely, and for one year after notification of denunciation, then ceasing as to that country only.

[78] *Documentación relativa a los tratados centroamericanos firmados en Guatemala el 12 de abril de 1934* (San José, 1934), 33. *U. S. Tr. Inf. Bull.*, May 1934, No. 56, 31. *Docs. on Int. Affairs, 1934* (London, 1935), 447. Hudson, *Int. Legislation* (Washington, 1937), VI, 824. *Bull. Pan Amer. Union* (1934), LXVIII, 407.

[79] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 57, p. 315. *League of Nations Treaty Series*, No. 4350, CLXXXVIII, 10. 51 Stat. L. 15. *U. S. Treaty Series*, No. 922. *Treaties of the U. S.* (Malloy, 1938), IV, 4817. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 351, 383. *Trats. y Convs. Vig.* (Mexico City, 1938), IV, 609. *Rev. de Der. Int.* (Habana, 1937), XXXI, 125. *Amer. J. Int. Law*, XXXI (1937), Supp., 53. *U. S. Tr. Inf. Bull.*, Jan. 1937, No. 88, 25. *For. Aff.*, XV (1937), 448.

Signed at Buenos Aires, December 23, 1936 (in force, July 1, 1937), by ten South American republics and:

	Ratified	Deposited
Costa Rica	Mar. 23, 1939 Decr. Leg. Num. 36	July 21, 1939
Cuba	Dec. 27, 1937	Mar. 25, 1938
Dominican Republic	May 10, 1937 Law No. 1294	July 1, 1937
Guatemala	June 10, 1938	Aug. 4, 1938
Haiti		Aug. 20, 1938
Honduras Decr. Leg. Num. 18	Dec. 27, 1937 with a reservation	July 25, 1938
Mexico	Nov. 23, 1937	Dec. 15, 1937
Nicaragua	June 11, 1937	Nov. 24, 1938
Panama		Dec. 7, 1938
Salvador	Sept. 10, 1937 Decr. Num. 141	Apr. 12, 1938
United States	July 15, 1937	Aug. 25, 1937

170. Inter-American Conference for the Maintenance of Peace

Treaty [80] on the prevention of controversies by the establishment of permanent bilateral mixed commissions; ratifications to be deposited with the Pan American Union in Washington; in effect indefinitely and for one year after notification of denunciation, then ceasing as to that country only.

Signed at Buenos Aires, December 23, 1936 (in force, June 25, 1937), by ten South American republics and:

	Ratified	Deposited
Costa Rica	Mar. 23, 1939 Decr. Leg. Num. 36	June 27, 1939
Cuba	Dec. 27, 1937	Mar. 1, 1938
Dominican Republic	May 10, 1937 Law No. 1297	June 5, 1937
Guatemala	June 10, 1938 with a reservation	Aug. 23, 1938
Haiti		Sept. 10, 1938
Honduras Decr. Leg. Num. 21	Dec. 27, 1937 with a reservation	Aug. 3, 1938

[80] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 57, p. 315. *League of Nations Treaty Series*, No. 4352, CLXXXVIII, 54. 51 Stat. L. 65. *U. S. Treaty Series*, No. 924. *Treaties of the U. S.* (Malloy, 1938), IV, 4824. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 369, 384. *Trats. y Conv. Vig.* (Mexico City, 1938), IV, 627. *Rev. de Der. Int.* (Habana, 1937), XXXI, 128. *Amer. J. Int. Law*, XXXI (1937), Supp., 63. *U. S. Tr. Inf. Bull.*, Feb. 1937, No. 89, 26.

	Ratified	Deposited
Mexico	Nov. 23, 1937	Dec. 23, 1937
Nicaragua	June 11, 1937	Dec. 6, 1938
Panama		Dec. 13, 1938
Salvador	Sept. 10, 1937 Decr. Num. 144	Apr. 1, 1938
United States	July 15, 1937	July 29, 1937

171. Inter-American Conference for the Maintenance of Peace

Treaty[81] for settlement of controversies by recourse to the good offices or mediation of an eminent American citizen chosen from a general list; ratifications to be deposited with the Pan American Union in Washington; in effect indefinitely and for one year after notification of denunciation, then ceasing as to that country only.

Signed at Buenos Aires, December 23, 1936 (in force, July 29, 1937), by ten South American republics and:

	Ratified	Deposited
Costa Rica	Mar. 23, 1939 Decr. Leg. Num. 36	June 27, 1939
Cuba	Dec. 27, 1937	Mar. 1, 1938
Dominican Republic	May 10, 1937 Law No. 1298	June 5, 1937
Guatemala	June 10, 1938	Aug. 23, 1938
Haiti		Sept. 10, 1938
Honduras Decr. Leg. Num. 22	Dec. 27, 1937 with a reservation	Aug. 3, 1938
Mexico	Nov. 23, 1937	Dec. 23, 1937
Nicaragua	June 11, 1937	Apr. 29, 1938
Panama		Dec. 13, 1938
Salvador	Sept. 10, 1937 Decr. Num. 145	Apr. 1, 1938
United States	July 15, 1937	July 29, 1937

172. Inter-American Conference for the Maintenance of Peace

Convention[82] (Article 1) reaffirming obligations to settle by pacific means controversies of an international character, as agreed in the Gondra Treaty of

[81] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 57, p. 315. *League of Nations Treaty Series*, No. 4353, CLXXXVIII, 76. 51 Stat. L. 90. *U. S. Treaty Series*, No. 925. *Treaties of the U. S.* (Malloy, 1938), IV, 4827. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 376, 384. *Trats. y Convs. Vig.* (Mexico City, 1938), IV, 635. *Rev. de Der. Int.* (Habana, 1937), XXXI, 130. *Amer. J. Int. Law*, XXXI (1937), Supp., 64. *U. S. Tr. Inf. Bull.*, Feb. 1937, No. 89, 28.

[82] See Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), Chap. III, Sec. 57, p. 315. 51 Stat. L. 116. *U. S. Treaty Series*, No. 926. *Treaties of the U. S.* (Mal-

May 3, 1923, the Briand-Kellogg Pact of August 28, 1928, the General Conciliation Convention of January 5, 1929, the General Arbitration Treaty of January 5, 1929, and the Saavedra Lamas Treaty of October 10, 1933; (Article 2) agreeing on consultation and coöperation when an emergency arises affecting the common interest in the maintenance of peace; (Article 3) no hostilities during consultation of not over six months; (Article 6) adoption of a common and solidary attitude as neutrals; (Article 8) ratifications to be deposited with Argentina; convention to be in force indefinitely, any denunciation to be effective one year after notification.

Signed at Buenos Aires, December 23, 1936 (in force, August 20, 1938), by ten South American republics and:

	Ratified	Deposited
Costa Rica	(Signed only)	
Cuba	Dec. 27, 1937	Mar. 25, 1938
Dominican Republic	May 10, 1937 Law No. 1296	July 1, 1937
Guatemala	June 10, 1938	Aug. 4, 1938
Haiti	193	Aug. 20, 1938
Honduras Decr. Leg. Num. 20	Dec. 27, 1937 with a reservation	Aug. 16, 1938
Mexico	Nov. 23, 1937	Dec. 15, 1937
Nicaragua	June 11, 1937	Nov. 24, 1938
Panama	193	Dec. 7, 1938
Salvador Signed with a reservation. Decr. Num. 143	Sept. 10, 1937 with a reservation	Apr. 12, 1938
United States	July 15, 1937 with a declaration	Aug. 25, 1937

173. Eighth International Conference of American States

Declaration of American principles,[83] of (1) non-intervention, (2) settlement of all differences by peaceful means, (3) use of force proscribed, (4) precepts of international law to govern relations between states, (5) faithful observance of treaties, (6) peaceful collaboration and intellectual interchange, (7) economic reconstruction, and (8) international coöperation.

Adopted at Lima, December 24, 1938, by delegates of ten South American

loy, 1938), IV, 4831. *Trats. y Convs. de la Rep. Dom.* (Ciudad Trujillo, 1937), I, 358, 383. *Trats. y Convs. Vig.* (Mexico City, 1938), IV, 617. *Rev. de Der. Int.* (Habana, 1937), XXXI, 132. *Amer. J. Int. Law*, XXXI (1937), Supp., 58. *U. S. Tr. Inf. Bull.*, Feb. 1937, No. 89, 21. *For. Aff.*, XV (1937), 450.

[83] *U. S. Tr. Inf. Bull.*, Jan. 1939, No. 112, 2. *Bull. Pan Amer. Union*, LXXIII (1939), 69, 121. *Rev. de Der. Int.* (Habana, 1939), XXXV, 153.

republics and of Costa Rica, Cuba, Dominican Republic, Guatemala, Haiti, Honduras (ratified, February 23, 1940), Mexico, Nicaragua, Panama, Salvador, and the United States.

174. Eighth International Conference of American States

Declaration[84] of Lima, reaffirming continental solidarity, with procedure of consultation, by ministers for foreign affairs.

Adopted at Lima, December 24, 1938, by delegates of ten South American republics and of Costa Rica, Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Salvador, and the United States.

Reaffirmed at Panama City, October 3, 1939, by the foreign ministers or their representatives, of all twenty-one American republics.

175. Inter-American Neutrality Conference

Declaration[85] of Panama, for American nations to take joint action requesting the belligerent governments in the Hitler war to agree not to commit acts of war within a neutral zone in waters surrounding North and South America, excepting Canada and the possessions of European nations such as British and French islands in the West Indies, British Honduras, and British and French Guiana; with consultation if the belligerents refused to agree. The proposed sea safety belt was tentatively suggested as three hundred miles wide.

Adopted at Panama City, October 3, 1939, by the foreign ministers or their representatives, of ten South American republics, with a reservation by Argentina as to the Malvinas (Falkland Islands), and Costa Rica, Cuba, Dominican Republic, Guatemala, with a reservation as to British Honduras, Haiti, Honduras, Mexico, Nicaragua, Panama, Salvador, and the United States.

176. Inter-American Neutrality Conference

Declaration[86] of the neutrality of the American republics in the Hitler war, to maintain neutral status and fulfill neutral duties uniformly so far as possible.

[84] *U. S. Tr. Inf. Bull.*, Jan. 1939, No. 112, 3. *U. S. Dept. of State Bull.*, I (1939), 20, 287, 326, 660. *Bull. Pan Amer. Union*, LXXIII (1939), 68, 129.

[85] *U. S. Dept. of State Bull.*, I (1939), 331, 723; II (1940), 199, 306. *Amer. J. Int. Law*, XXXIV (1940), 493. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 265. *A. B. A. Journal*, XXVI (1940), 860. *Rev. de Der. Int.* (Habana, 1940), XXXVII, 95.

[86] *U. S. Dept. of State Bull.*, I (1939), 326, 662.

Adopted at Panama City, October 3, 1939, by the foreign ministers or their representatives, of ten South American republics, and

	Proclaimed neutrality as to	
	Germany	Italy
Costa Rica		
Cuba	Sept. 1, 1939	
Dominican Republic	Sept. 7, 1939	
Guatemala	Sept. 4, 1939	
Haiti	Sept. 16, 1939	
Honduras		
Mexico	Sept. 4, 1939	
Nicaragua	Sept. 8, 1939	
Panama	Sept. 11, 1939	
Salvador		
United States	Sept. 5, 1939	June 11, 1940

APPENDIX

APPENDIX

MARINE BOUNDARIES

THE three-mile limit (three nautical miles, one marine league, or 3.453 English statute land miles) for the extent of jurisdiction at sea from the salt water shores of a nation may be said to be still the prevailing rule of international law.[1] The proposed American extension to three hundred miles or more, by the declaration of Panama[2] has not been accepted by France, Germany, or Great Britain; and the proposed domestic extensions to twenty-seven miles by Louisiana and Delaware are probably beyond their powers as states, and not to be recognized even by the United States itself.[3] Spain's claim to a six-mile limit may be supposed to be the foundation for the doctrine, until modified by new or special laws, of all of the Central American and Caribbean republics except Haiti, but seemed on pressure from the United States[4] to be confined to cases of special exigency for the enforcement of commerce and trade regulations.

Costa Rica. In the general treaty of June 11, 1856,[5] with New Granada, it was agreed that the dividing line should begin "on the coast of the Pacific" (at Burica Point) and end in the middle of the principal bed of the river Agua Clara at "its point of emptying into the Atlantic." In the boundary treaty with Nicaragua of April 15, 1858,[6] Costa Rica agreed to begin the line "at the mouth of the San Juan river, in Nicaragua" and to end it at "the center point of Salinas Bay in the South Sea"; and in the later treaties of February 5, 1883, and of January 19, 1884, with Nicaragua the line was said to begin "on the right bank of the river Colorado, at its point of emptying into the Atlantic" and to end at "the center point of Salinas Bay, in the South Sea." In the boundary treaty signed at San José, April 18, 1873,[7] Costa Rica and Colombia agreed that the line should start "from the coast of the Pacific Ocean at Burica Point" and end in the course of the Barrancos River at "its point of emptying into Almirante Bay"; and the Loubet award of 1900 ran the line "from Cape Mona, on the Atlantic Ocean . . . to terminate at Burica Point, on the Pacific Ocean." Costa Rica and Panama agreed in the boundary treaty signed at Panama City, March 6, 1905,[8] that the line should start "from Punta Mona on the Atlantic Ocean" and run finally along the river Golfito "until it empties into the Dulce Gulf, at the mouth called Golfito";

> Between this last point and Puntarenitas a straight imaginary line will divide the waters of Dulce Gulf, the western portion of it remaining under the exclusive dominion of Costa Rica and the eastern part under the common dominion of both signatory Republics, excepting that which on their respective coasts is called litoral sea and which shall be considered an integral part of the contiguous territory.

The White award of 1914 started the line "at the mouth of the Sixaola River in the Atlantic"; and the proposed boundary treaty of September 26, 1938, ran the line "from the mouth of the

[1] Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), App. C, 330.

[2] See Chap. III, Sec. 175, *supra.*

[3] Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 280.

[4] William E. Masterson, *Jurisdiction in Marginal Seas* (New York, 1929), 265.

[5] See Chap. I, Sec. 2A, *supra.*

[6] See Chap. I, Sec. 1, *supra.*

[7] See Chap. I, Sec. 2A, *supra.*

[8] See Chap. I, Sec. 2B, *supra.*

river Gandoca in the Caribbean Sea . . . to end at Point Burica in the Pacific Ocean." These recitals offer merely the negative evidence that the countries were evidently not then considering very closely their sea boundaries. The Law of Waters of May 26, 1884,[9] however, provides:

> Art. 1. The waters of the maritime zone which surrounds the coasts of the Republic are of public dominion for the whole width determined by international law.

There seem to be no further laws or decrees and no reported decisions bearing upon the width of the territorial sea, and until something definite appears, it can only be assumed that Costa Rica has adopted the three-mile limit.

Cuba. As the laws of Spain were supposed to continue for Cuba after the Spanish-American War only until modified, the Spanish claim of a six-mile limit for the territorial sea, if in force until 1898, was altered for fiscal purposes at least by the first military government, under General Leonard Wood, in the Customs Regulations [10] providing,

> Art. 64 (par. 2). The jurisdictional waters of Cuba extend to four leagues from the coasts of the Island or of the cays belonging thereto.

In the anti-rum-running treaty of March 4, 1926,[11] with the United States, Cuba agreed to the principle of three marine miles seaward from low water mark as the territorial limit generally. The government of President Grau San Martín in a decree of January 8, 1934,[12] reorganizing the navy, declared that

> Art. 6. The territorial waters or maritime frontiers of Cuba extend six miles from the coast or from the line of cays which surrounds it.

This too, however, may from the nature of the whole enactment be construed to apply only to the fiscal laws; and it seems likely that under the influence of Dr. de Bustamante as an international expert [13] Cuba may accept the three-mile limit when the question squarely arises.

Dominican Republic. The successive constitutions from 1854 to 1929 expressly include "the adjacent islands" but make no mention of waters along the coast, and there appears to be nothing in the codes or general laws fixing the width of the territorial sea. The treaty of June 3, 1777,[14] between France and Spain fixed the boundary across the island from "the mouth of the Daxabón or Massacre river on the north" to "the mouth of the Pedernales or Anses á Pitre river" on the south. The United States military government under Rear Admiral Thomas Snowden on December 17, 1920,[15] established a maritime zone five meters wide upland from the line reached by ordinary high tide on all the coasts and beaches of the republic and a tides zone as part of the lands of public dominion [16] between the lines of high and low tides. In the boundary treaty of January 21, 1929,[17] with Haiti, the line started from "the

[9] Ley de Aguas, Decr. Num. 11. *Col. de Leyes, 1884* (San José), 196. *Leyes Usuales de Costa Rica* (San José, 1935), 91.

[10] Mil. Order No. 173 of June 22, 1901. *Col. Leg.* (1901), II, 91. Empresa Naviera de Cuba, S. A. *c* Walter Runciman & Co., Ltd.; Aud. Hab. No. 135, Feb. 11, 1932; *Rep. Jud.* (Habana, 1933), IX, 35.

[11] 44 Stat. L. III, 2395. *U. S. Treaty Series*, No. 738. *Treaties of the U. S.* (Malloy, 1938), IV, 4041. Bustamante, *Der. Int. Pub.* (Habana, 1936), III, 80. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 278.

[12] Decr.-Ley Num. 108. *Jurispr. al Día* (1934), Secc. de Leg. 26. Alberto de Carricarte, "Cuba, su Territorio y Jurisdicción," *Rev. de Der. Int.* (Habana), XXX (1936), 92, 101–106.

[13] Antonio Sánchez de Bustamante y Sirven, *El Mar Territorial* (Habana, 1930), 203; *The Territorial Sea* (New York, 1930), 106; *La Mer Territoriale* (Paris, 1930), 189.

[14] See Chap. I, Sec. 3, *supra*.

[15] Exec. Order No. 580. *Col. de Ords. Ejec. de 1920* (Santo Domingo, 1921), 536.

[16] *Ley de Bienes Nacionales*, July 2, 1845, amended in 1846, 1847, and 1870. *Col. de Leyes* (Santo Domingo), I, 174, 234, 365; V, 221.

[17] See Chap. I, Sec. 3, *supra*.

mouth of the river Dajabon in the Atlantic Ocean (Bay of Mancenille, north of the island)" and ended at the mouth of the river Padernales "in the Caribbean Sea, south of the island." A law of 1933 [18] provided that objects fallen or lost in the territorial sea of the republic when recovered belong one half to the state and one half to the finder. In the absence of other evidence, the three-mile rule may probably be assumed to have been accepted.

Guatemala. In the boundary treaty with Great Britain signed at Guatemala City on April 30, 1859,[19] Guatemala agreed that the line with British Honduras should begin "at the mouth of the river Sarstoon in the Bay of Honduras"; and in the boundary treaty with Mexico signed at Mexico City on September 27, 1882,[20] Guatemala agreed that the boundary should begin in the median line of the river Suchiate at "a point in the (Pacific) sea three leagues from its mouth." The boundary treaty of April 9, 1938,[21] between Guatemala and Salvador ran the boundary "down the course of the river Paz till it empties in the Pacific Ocean." The Guatemalan constitutions and codes make no mention of the territorial sea, though the Agrarian Law [22] declares that the maritime-land zone possessed by the state cannot be alienated, and reserves for public uses fifteen hundred meters of land measured from the upper shores of the oceans. So far as there are any indications, then, Guatemala would seem to have united with Mexico in claiming territorial waters in the Pacific to be nine miles wide.

Haiti. The successive constitutions from 1801 to 1935 expressly include "the adjacent islands," but say nothing of the waters along the coast; and the law of national domain [23] declares only that the shores, alluvion, and deposits of the sea are public domain, inalienable by the state, and incapable of private ownership, without mentioning the foreshore or the marginal sea. As we have seen above, Haiti's boundary treaty of January 21, 1929,[24] with the Dominican Republic ran the line from river mouth in the Atlantic to river mouth in the Caribbean. There would thus seem to have been no indication of what the Haitian doctrine as to marginal sea may be, beyond the initial presumption of survival of the French law which prevailed in colonial times, calling for from 3 to 12.4 miles, according to the purpose, as described below.

Honduras. The third Civil Code,[25] which has been in effect since March 1, 1906, like the first,[26] which was in force from January 1, 1881, to September 15, 1899, provides:

> Art. 621. The adjacent sea, to the distance of one marine league, measured from the line of lowest tide, is territorial sea and part of the national domain; but the police power, for matters concerning the security of the country and the observance of the fiscal laws, extends to the distance of four marine leagues, measured in the same manner.
>
> Art. 622. By shore of the sea is understood the extent of land which the waves bathe and bare alternately up to where they reach in the highest tides.

The second Civil Code,[27] in effect from September 15, 1899, to March 1, 1906, only defined property destined for public use under public dominion to include shores, beaches, roadsteads, and the like. The existing law is thus in accord with the three-mile rule for the marginal sea.

[18] Law No 538 of June 28, 1933. *Col. de Leyes de 1933* (Santo Domingo, 1934), 147

[19] See Chap. I, Sec. 7, *supra.*

[20] See Chap. I, Sec. 5, *supra*

[21] See Chap. I, Sec. 6, *supra.*

[22] Article 15, Decr. 483 of Feb. 9, 1894. *Recop. de las Leyes* (Guatemala City, 1895), XII, 636. Articles 5, 37, Decr. Num. 2159 of April 29, 1936. *Recop. de las Leyes* (Guatemala City, 1938), LV, 92. *Leyes Vig. de Gob. y Just.* (Guatemala City, 1937), 592.

[23] Article 443, Civil Code (in effect May 1, 1826). Article 2, Law of Aug. 21, 1908. *Ann. de Leg. Haitienne* (Port-au-Prince, 1909), V, 20. Article 2. Law of July 10, 1934. *Bull. des Lois et Actes* (Port-au-Prince, 1934), 194.

[24] See Chap. I, Sec. 3, *supra.*

[25] Libro II, Titulo III, Articles 617–633, De los bienes nacionales, Civil Code of Feb. 8, 1906.

[26] Articles 671 and 672, Libro II, Titulo III, Articles 667–683, De los bienes nacionales, Civil Code of Aug. 27, 1880.

[27] Article 356, Libro II, Titulo I, Cap. III, Civil Code of Dec. 31, 1898.

Mexico. The rule at first was three leagues, as indicated in the Treaty of Guadelupe Hidalgo of February 2, 1848, and the Gadsden Treaty of December 30, 1853,[28] with the United States, both of which began the boundary line "in the Gulf of Mexico three leagues from land, opposite the mouth of the Rio Grande"; the boundary treaty of September 27, 1882,[29] with Guatemala, which ran the boundary "from a point in the (Pacific) sea three leagues from" the mouth of the Suchiate River; the treaty of friendship, commerce, and navigation of July 10, 1888,[30] with Ecuador, in which the parties agreed (Article 9) "to consider as limits of the territorial sovereignty on their respective coasts the distance of twenty kilometers, reckoned from the line of lowest tide," and the treaty of friendship, commerce, and navigation of November 27, 1888,[31] with Great Britain, in which the parties agreed (Article 4) "to consider as the limit of the territorial sea on their respective coasts the distance of three marine leagues, reckoned from the line of low tide," for customs regulations and measures to prevent smuggling only. In 1890 [32] the shores of the sea were declared to form part of the public domain. The width of the territorial sea was fixed at three nautical miles by the Law of Federal Real Property of December 18, 1902,[33] which provided:

> Art. 4. Properties of the public domain or of common use, belonging to the Federation, are:
> I. The territorial sea to the distance of three maritime miles, measured from the line of lowest tide on the main coast or on the shores of the islands which form part of the national territory.
> II. The shores of the sea, understanding as such the portions of land which, by reason of the tide, the water covers and uncovers to the limits of the greatest annual tide.
> III. The land maritime zone, or the strip of main land twenty meters wide, contiguous to the shores of the sea or the banks of rivers from their mouth in the sea to the point upstream reached by the greatest annual tide.

A recent decree appears to revive the claim of nine miles.[33a]

Nicaragua. In the boundary treaty with Costa Rica of April 15, 1858,[34] Nicaragua agreed to begin the line "at the mouth of the San Juan river in Nicaragua" and to end it at "the center point of Salinas Bay in the South Sea"; and in the later treaties of February 5, 1883, and of January 19, 1884, with Costa Rica, the line was said to begin "on the right bank of the river Colorado at its point of emptying into the Atlantic" and to end at "the center point of Salinas Bay in the South Sea." The Civil Code of February 1, 1904,[35] says only,

> Art. 611. Natural or artificial things appropriated or produced by the state and maintained under its administration are public. . . . Such are . . . (2) the salt waters of the coasts, swamps, inlets, cays, rivers and their beds.

In the boundary dispute with Honduras, 1900–1904,[36] the Nicaraguan commissioners desired to run the line along the meridian of Cape Camarón "until it loses itself in the sea"; and the king of Spain's award of December 23, 1906, settled the line from "the mouth of the river Coco, Segovia or Wanks in the sea, next to Cape Gracias á Dios." There seem to be no further

[28] See Chap. I, Sec. 16B, *supra*.
[29] See Chap. I, Sec. 5, *supra*.
[30] *Trats. y Convs. Vig.* (Mexico City, 1930), I, 107.
[31] *Trats. y Convs. Vig.* (Mexico City, 1904), 124; I (1909), 405. 79 *British and Foreign State Papers* 25.
[32] "Occupation of the Maritime Zone," War Dept. Circular, Feb. 20, 1890. *Anuario de Legis. y Jurispr.* (Mexico City, 1890), Secc. de Leg. VII, 84.
[33] *Ley de Bienes Inmuebles de la Federación, Leg. Mex.* (Mexico City, 1904), XXXIV, 266. *Recop. de Leyes* (Mexico City, 1906), LXXVIII, 1304.
[33a] See Gac. Of., Oct., 1940.
[34] See Chap. I, Sec. 1, *supra*.
[35] In effect, May 5, 1904. National property of public use is not susceptible of private appropriation. Mallitz *c* Asoc. de Plantadores, Feb. 24, 1911. *Bol. Jud.*, III (1915), 915.
[36] See Chap. I, Sec. 8, *supra*.

laws or decrees and no reported decisions bearing upon the width of the territorial sea, and until something definite appears, it can only be assumed that Nicaragua has adopted the three-mile limit.

Panama. Colombia by decree of November 6, 1866,[37] included in national territory all the sea to a distance of one marine league from the coast, and Panama began existence under this legal provision. In the treaty of November 18, 1903,[38] with the United States, the Canal Zone grant runs from "the Caribbean Sea three marine miles from mean low water mark" across the Isthmus "into the Pacific Ocean to a distance of three marine miles from mean low water mark." The National Assembly of Panama in its conditional approval of the three agreements of March 6, 1905,[39] with Costa Rica described an imaginary line from the mouth of the river Golfito; and in the boundary treaties of April 6, 1914, and August 20, 1924,[40] with Colombia, Panama agreed to a line from Cape Tiburon to "a point on the Pacific equidistant from Cocalito and La Ardita"; but these latter treaty provisions probably indicate only that the negotiators were attending merely to the land lines. Islands which are formed in the seas adjacent to the coasts of Panama belong to the state; [41] and islands in either sea in the jurisdiction of the republic are inadjudicable.[42] In the anti-rum-running treaty of June 6, 1924,[43] with the United States, Panama agreed to the principle of three marine miles seaward from low water mark as the territorial limit generally. There seem to be no further laws or decrees and no reported decisions bearing upon the width of the territorial sea, but in view of the Colombian inheritance, the United States treaties, and the influence of the United States doctrine so close at hand, it may be assumed that Panama has accepted the three-mile limit.

Salvador. The Civil Code of 1860 [44] provides:

> Art. 574. The adjacent sea to the distance of one marine league, measured from the line of lowest tide, is territorial sea and [part] of the national domain; but the police power for matters concerning the security of the country and the observance of the fiscal laws, extends to the distance of four marine leagues, measured in the same manner.
>
> Art. 575. By shore of the sea is understood the extent of land which the waves bathe and bare alternately up to where they reach in the highest tides.

The Regulations for the Navy, of April 11, 1902,[45] declare:

> Art. 3. . . . By territorial sea or (sea) of national domain, is understood that adjacent to a distance of one marine league, starting from the line of the lowest tide; but the police power for matters concerning the security of the country and the observance of the fiscal laws, extends to the distance of four marine leagues, measured in the same manner.

The Central American Court of Justice in its decision on the complaint of Salvador against Nicaragua [46] based in part on these provisions its conclusion that while a common zone of maritime inspection existed in the Gulf of Fonseca, on the high seas such right was separate for each nation and extended seaward between the boundaries of each end of their respective coasts, only.

[37] Ireland, *Boundaries, Possessions, and Conflicts in South America* (1938), App. C, 332.

[38] See Chap. I, Sec. 15B, *supra.*

[39] See Chap. I, Sec. 2B, *supra.*

[40] See Chap. I, Sec. 14, *supra.*

[41] Article 383, Civil Code of Aug. 22, 1916, in effect, July 1, 1917.

[42] Decr. Num. 31 of May 13, 1913. *Disp. sobre Tierras Baldías* (Panama City, 1913), 21.

[43] 43 Stat. L. II, 1875. *U. S. Treaty Series,* No. 707. *Treaties of the U. S.* (Malloy, 1938), IV, 4545. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 278.

[44] Articles 663 and 664 in 2d edition of Civil Code, of Nov. 10, 1880.

[45] *Anuario de Leg. de El Salvador, 1902* (San Salvador), 38.

[46] See Chap. I, Sec. 13, *supra.* Philip C. Jessup. *Law of Territorial Waters* (New York, 1927), 408. Salvador Rodríguez González, *El Golfo de Fonseca* (San Salvador, 1917), 327.

France. The French doctrine as to territorial seas is confused by lengthy treatment of many separate aspects, but seems to be in general that such sea extends three miles for fishing and war time defense, six miles for peace time security and neutrality, and two myriameters (12.4 miles) for customs matters.[47] In the anti-rum-running treaty of June 30, 1923,[48] with the United States, the parties respectively retained their rights and claims as to the extent of their territorial jurisdiction.

Great Britain. The British doctrine has long upheld the principle that three marine miles from the coast line constitute the proper limit of territorial waters.[49] Its honoring in agreements with the United States may be observed in the first Hay-Pauncefote Convention of February 5, 1900, and the second of November 18, 1901,[50] and the anti-rum-running treaty of January 23, 1924.[51]

The Dominion of Canada accepts three nautical miles for general territorial waters, extended to three leagues for customs and excise purposes,[52] with probable power in the Canadian Parliament to extend control to a greater distance over vessels registered in Canada, but not over others contrary to international law.[53]

The Netherlands. The Dutch law supports the three-mile limit, except as extended by specific treaty agreement.[54]

United States. This country has apparently always agreed that the territorial sea is one marine league or three nautical miles in width, subject to extension for public health, immigration, customs, and other federal purposes by specific agreements with particular nations, as to their nationals, ships, and commerce, but not yet by general international law.[55]

[47] A. Mérignhac, *Tr. de Dr. Pub. Int.* (Paris, 1907), II, 378. *Rev. de Der. Int.*, XVII (Paris, 1936), 712. Philip C. Jessup, *Law of Territorial Waters* (New York, 1927), 18, 88, 101, 145. *League of Nations Publications*, V Legal (1926), C 44, M 21, V, 10, 7; (1929), C 74, M 39, V, 2, 10, 15, 19, 28, 36, 41, 57, 62, 67, 73, 81, 89, 99, 158–162. Trib. de Comm. de Marseille, 21 dec. 1900. *Rev. Int. du Dr. Mar.*, XVI (1900–01), 809.

[48] 45 Stat. L. II, 2403. *U. S. Treaty Series*, No. 755. *Treaties of the U. S.* (Malloy, 1938), IV, 4175. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, II, 278.

[49] Birkenhead, *Int. Law* (6th ed., London, 1927), 103. Oppenheim, *Int. Law* (4th ed., London, 1928), 393–404. *Wheaton's Elements of Int. Law* (Keith, 6th Eng. ed., London, 1929), I, 361. Baty, *Canons of Int. Law* (London, 1930), 148. Philip C. Jessup. *Law of Territorial Waters* (New York, 1927), 10, 77, 169. *League of Nations Publications*, V Legal (1926), C 44, M 21, V, 10, 7; (1929), C 74, M 39, V, 2 15, 19, 28, 36, 41, 46, 49, 53, 57, 62, 67, 74, 82, 89, 95, 99, 162–166

[50] See Chap. I, Sec. 13, *supra*.

[51] 43 Stat. L. II, 1761. *U. S. Treaty Series*, No 685. *Treaties of the U. S.* (Malloy, 1938), IV, 4225. William E. Masterson, *Jurisdiction in Marginal Seas* (New York, 1929), 326. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 278.

[52] William E. Masterson, *Jurisdiction in Marginal Seas* (New York, 1929), 166. Bays: Philip C. Jessup, *Law of Territorial Waters* (New York, 1927), 368, 411. *British Year Book of Int. Law*, XX (1939), 122.

[53] *British Year Book of Int. Law*, XIV (1933), 149, 155. Arthur B. Keith, *The Dominions as Sovereign States* (London, 1938), 128. *League of Nations Publications*, V Legal (1929), C 74 (a), M 39 (a), V, 9, 2–4.

[54] Philip C. Jessup, *Law of Territorial Waters* (New York, 1927), 43. *League of Nations Publications*, V Legal (1926), C 44, M 21, V, 10, 7; (1929), C 74, M 39, V, 2, 11, 15, 20, 31, 37, 43, 46, 50, 53, 58, 62, 69, 74, 77, 84, 90, 95, 100, 176–181. Trib. de Rotterdam, 9 fevr. 1889. *Rev. Int. de Dr. Mar.*, V (1889–90), 397.

[55] Philip C. Jessup, *Law of Territorial Waters* (New York, 1927), 49, 80, 178. William E. Masterson, *Jurisdiction of Marginal Seas* (New York, 1929), 175–252. Ireland, "Marginal Seas Around the States," *La. Law Rev.*, 1940, II, 270, 476. *League of Nations Publications*, V Legal (1926), C 44, M 21, V, 10, 7; (1929), C 74, M 39, V, 2, 14, 19, 26, 40, 46, 52, 56, 66, 73, 81, 93, 98, 128–154.

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